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Federal Register

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Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

RIN 0572-AA53

Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII part 1786, Discounted Prepayments on REA Notes, by adding a new subpart E, Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers. The addition to part 1786 establishes policies and procedures to implement the provisions of 306B of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) ("Act"). Section 306B(b) authorizes the Administrator of REA to permit certain borrowers to prepay loans made under the Act at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator. These borrowers (See appendix A) are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to section 306B(a) (See 7 CFR part 1786, subpart C, Special Discounted Prepayments on REA Direct/Insured Loans). Prepayments by a borrower hereunder shall be made not later than one year after the effective date of the merger, consolidation, or other transaction. This regulation provides a formula for computing the amount which the borrower must pay

and establishes certain other requirements which borrowers must meet in order to prepay loans.

DATES: Effective date: August 6, 1991.

REA will accept prepayment applications as of August 6, 1991.

ADDRESSES: Applications may be submitted to Finance and Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: David J. Lessels, Acting Chief, Finance and Management Staff, (202) 382-0094.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act (the Act), REA hereby amends 7 CFR chapter XVII part 1786 by adding subpart E concerning discounted prepayments on REA notes. This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "non-major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)), and therefore, does not require an environmental impact statement or environment assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electric Loans and Guarantees. For the reasons set forth in the Final Rule and related Notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The information collection and recordkeeping requirements contained in this final rule have been approved by

the Office of Management and Budget (OMB) under control number 0572-0092 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding these requirements should be directed to the Office of Management and Budget, Information and Regulatory Affairs, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

Background

REA provides long-term low interest rate loans to eligible borrowers for the purpose of furnishing and improving electric and telephone service in rural areas. The notes evidencing such loans bear interest at either two or five percent. The notes, as well as the proceeds from the sale, assignment or prepayment of the notes are assets of the Rural Electrification and Telephone Revolving Fund ("Fund") to be used for such purposes as are permitted by the Act. Section 2387 of Public Law 101-624, enacted November 28, 1990, amended the Act by adding section 306B(b) which provides that an REA loan may be prepaid by certain electric borrowers at the lesser of the outstanding principal balance due on such loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator (Discounted Present Value). These borrowers are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to section 306B(a). There were 29 electric borrowers that prepaid their direct and/or insured loans under section 306B(a), and these borrowers are listed in appendix A to subpart E.

This regulation will implement section 306B(b), establishing terms and conditions of prepayment. The formula to determine the Discounted Present Value of the notes uses, as the discount rate, the current cost of funds to the U.S. Treasury. This rate will be based on market yields and estimated for comparable maturities. Among the terms and conditions of prepayment are the following:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA.

(b) The borrower must agree to prepay all of its outstanding REA Notes.

(c) The borrower must identify the source of financing that will be used to refinance its outstanding REA notes. The borrower must certify in writing whether the financing will be tax exempt; and, if so, shall furnish all information on the financing sufficient to enable REA to adjust the discount to the equivalent to fully taxable financing.

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or have repaid REA for all unexpended funds.

(e) The borrower must agree to a rescission of the unadvanced balance of the REA Notes, outstanding as of the date of its application for prepayment.

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between (1) the amount outstanding on the REA Note and (2) the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

Comments

In the proposed rule, published on May 2, 1991 (56 FR 20147), REA invited interested parties to file comments on or before June 3, 1991. Pennsylvania Rural Electric Association was the only respondent. The comments were considered, and minor language changes were made in the text. It was suggested that REA "require that a borrower requesting to prepay pursuant to this part, prepay at par value any REA loan funds advanced after November 28, 1990, the date of enactment of section 2387 of Public Law 101-624." The Agency does not view itself as having the discretion to require such prepayment at par value under section 306B, assuming the borrower otherwise qualifies under subpart E.

Effective Date

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this final rule for 30 days after

publication in the Federal Register. If the effective date were so postponed, REA believes that one or more borrowers could be precluded from making the prepayments otherwise authorized by section 306B(b) of the Rural Electrification Act of 1936, as amended. This would occur if the regulations were to become effective later than one year after the effective date of a particular borrower's merger. Section 306B(b) provides that "Prepayments by a borrower hereunder shall be made not later than one year after the merger, consolidation, or other transaction." REA also believes that making this regulation effective immediately will not be prejudicial to borrowers' interests in any way.

List of Subjects in 7 CFR Part 1786

Electric power, Federal financing bank, Loan programs—communication, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, REA hereby amends 7 CFR chapter XVII, part 1786 as follows:

1. The authority citation for part 1786 is added to read as follows:

Authority: 7 U.S.C. 901-950b; title I, subtitle B, Pub. L. 99-509; Pub. L. 101-624, 104 Stat. 4051; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart D—REA Privatization Demonstration Prepayment Program for the State of Alaska

2. Subpart D is amended by adding and reserving §§ 1786.87-1786.94.

3. A new subpart E is added to part 1786 to read as follows:

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

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1786.95	Purpose.
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Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers

Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

§ 1786.95 Purpose.

This subpart sets forth the policies and procedures of REA whereby certain electric borrowers may prepay outstanding REA Notes at the Discounted Present Value of the REA Notes with private financing.

§ 1786.96 Definitions.

As used in this subpart:

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.).

Administrator means the Administrator of REA.

Consolidation means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into a new successor organization that takes over the assets and assumes the liabilities of those organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

Discounted Present Value shall have the meaning specified in § 1786.98.

Fund means the Rural Electrification and Telephone Revolving Fund pursuant to the Act.

Merger means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Agreement means the agreement between the borrower and REA providing for loans pursuant to the Act.

REA Notes means those notes, bonds or other obligations evidencing indebtedness created by loans made or guaranteed by REA pursuant to titles I and III of the Act (7 U.S.C. 901-940).

§ 1786.97 Prepayment.

There were 29 former REA electric borrowers that prepaid their direct or insured loans under section 306B(a) of the Act prior to October 1, 1987. (See

subpart C of this part.) These borrowers are listed in appendix A to subpart E of this part. Any REA electric borrower which is the result of a merger or consolidation involving any of these 29 former borrowers and a borrower with outstanding Notes may, after meeting all requirements of this subpart, prepay all outstanding REA Notes issued or assumed by the borrower upon paying the lesser of the outstanding balance or the Discounted Present Value. Such prepayment must be made not later than one year after the effective date of the merger or consolidation.

§ 1786.98 Discounted present value.

(a) The Discounted Present Value shall be calculated by REA before prepayment is made by summing the present values of all remaining payments on all outstanding notes according to the following formula to compute the discounted present value of each note and adjusting as here and after provided for tax exempt financing.

$$\text{Present value} = \sum_{k=1}^n \frac{P_k}{\prod_{i=1}^k \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366} \right) \times 1 \right]}$$

Where:

P_k = Total payment, including interest, due on the k^{th} payment date following the prepayment date.

n = Total number of remaining payment dates.

l = The discount rate applied to each transaction will be ascertained by using data specified in the "Federal Reserve Statistical Release" which is published each Monday. (See Appendix B to Subpart E of this Part.) The specific discount rate will be the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication eight working days prior to the closing. In applying the discount rate, the 1-year Treasury rate will be used for all notes with a remaining term of less than 2 years; the 2-year Treasury rate for notes with maturities between 2 and 3 years; the 3-year Treasury rate for all notes with maturities between 3 and 5 years; the 5-year Treasury rate for all notes with maturities between 5 and 7 years; the 7-year Treasury rate for all notes with maturities between 7 and 10 years; the 10-year Treasury rate for all notes with maturities between 10 and 30 years; and the 30-year Treasury rate for all notes with maturities longer than 30 years.

$D1_i$ = Number of days in the i^{th} payment period that are in a non-leap year (365 day year).

$D2_i$ = Number of days in the i^{th} payment period that are in a leap year (366 day year).

(b) Notwithstanding paragraph (a) of this section, in the event that the borrower shall elect to prepay using tax exempt financing, the calculation of the

Discounted Present Value shall be adjusted to make the discount the equivalent of fully taxable financing.

§ 1786.99 Eligibility criteria.

To be eligible to prepay REA Notes at the Discounted Present Value, a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA;

(b) The borrower must agree to prepay all of its outstanding REA Notes;

(c) The borrower must identify the source of financing that will be used directly or indirectly to refinance its outstanding REA Notes. The borrower must certify in writing whether such financing will be tax exempt and, if so, shall furnish all information on the financing as REA may request to enable REA to adjust the discount to the equivalent to fully taxable financing;

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or repaid REA for all unexpended funds;

(e) The borrower must agree to a rescission of the unadvanced balance of any REA Notes outstanding as of the date of its application for prepayment;

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective Notes; and

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier. The borrower must also specifically agree to the following limitation: The borrower agrees that, for so long as the Wholesale Power Contract shall be in effect between the borrower and the power supplier, the borrower will not, without the approval in writing of the power supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power

district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the borrower shall pay such portion of the outstanding indebtedness evidenced by the power supplier's Notes at the time outstanding as shall be determined by the power supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier shall require.

§ 1786.100 Application procedure.

Any borrower seeking to prepay its REA Notes under this Subpart should apply to the appropriate REA Area Director not less than 60 days prior to one year after the effective date of the merger or consolidation by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding REA Notes;

(2) States the intent of the borrower to comply with all eligibility criteria set forth in § 1786.99 of this subpart; and

(3) Identifies the source of financing.

(b) A list of all REA Notes together with the outstanding amount on such notes.

(c) An opinion of counsel as to the effective date of the merger or consolidation.

(d) Such additional information as the Administrator will request.

§ 1786.101 Approval of application.

The applications will be reviewed and, if satisfactory, approved. Closing will be scheduled upon approval.

§ 1786.102 Prepayment agreement.

Upon approving an application for prepayment under this subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The REA Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place, date and conditions for closing.

(c) Agreement that the unadvanced balance of REA Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.103 Security.

If, after prepayment of REA Notes, the Government should continue to hold liens on the borrower's property, the Administrator of REA will consider a request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay REA Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value of the REA Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.104 Loan fund audit.

REA shall have the right to audit within 6 months of closing, transactions involving the REA construction fund established and maintained by the borrower pursuant to the terms of the REA Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to REA Notes which do not comply with the requirements of the REA Loan Agreement, the borrower shall be required to pay the Government an amount equal to the difference between

the amount which the borrower prepaid on such REA Notes evidencing REA loans funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of noncompliance if the borrower had not prepaid such REA Notes. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.105 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

(b) The REA Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement. REA shall designate the date of closing which in no event shall be later than one year after the effective date of the merger or consolidation. At closing, in addition to paying all current interest due on the date of prepayment, a borrower shall prepay the REA Notes by paying to the Government an amount equal to the lesser of the outstanding balance or the Discounted Present Value of the REA Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1786.106 Other prepayments.

REA loan documentation generally permits borrowers to prepay REA Notes by paying the outstanding balance due thereon. Nothing in this subpart shall prohibit any borrower from prepaying its outstanding REA Notes in accordance with the terms thereof. The provisions of this subpart shall not be applicable to such prepayment.

Appendix A to Subpart E of Part 1786— Listing of Eligible Borrowers

State	Borrower name and address
Colorado	Colorado-Ute Electric Assn., Inc., Montrose.

State	Borrower name and address
Florida	Lee County Electric Coop. Inc., North Fort Myers.
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg.
Louisiana	Beauregard Electric Cooperative, Inc., Deridder.
Missouri	Culvre River Electric Cooperative, Inc., Troy.
Nebraska	Roosevelt Public Power District, Mitchell.
Nebraska	Howard Greely Rural Public Power Dist., St. Paul.
Nebraska	Cuming County Public Power Dis- trict, West Point.
Nebraska	York County Rural Public Power District, York.
Nebraska	Elkhorn Rural Public Power District, Battle Creek.
Nebraska	Southern Nebraska Rural P P D., Grand Island.
Nebraska	McCook Public Power District, McCook.
Nebraska	Niobrara Valley Electric Memb. Corp., O'Neill.
Nebraska	Cornhusker Public Power District, Columbus.
Nebraska	Custer Public Power District, Broken Bow.
Nebraska	Northwest Rural Public Power Dist., Hay Springs.
Nebraska	Southwest Public Power District, Palisade.
Nebraska	Loup Valleys Rural Public Power District, Ord.
Nebraska	South Central Public Power Dis- trict, Nelson.
Oklahoma	Peoples' Electric Cooperative, Ada.
Texas	Deaf Smith County Electric Coop. Inc., Hereford.
Texas	Pedernales Electric Coop. Inc., Johnson City.
Texas	Bandera Electric Cooperative, Inc., Bandera.
Texas	Guadalupe Valley Electric Coop., Inc., Gonzales.
Texas	Bluebonnet Electric Cooperative, Inc., Giddings.
Texas	Cap Rock Electric Cooperative, Inc., Stanton.
Texas	San Bernard Electric Cooperative, Inc., Bellville.
Washington	Inland Power & Light Company, Spokane.
Washington	Pub. Util. Dist. No. 1 Grays Harbor Co., Aberdeen.

Appendix B to Subpart E of Part 1786— Federal Reserve Statistical Release

Federal Reserve Statistical Release

These data are released each Monday. The availability of the release will be announced when the information is available, on '2021 452-3206.

H. 15 (519)

For immediate release February 4, 1991.

SELECTED INTEREST RATES

[Yields in percent per annum]

Instruments	1991 Jan. 28	1991 Jan. 29	1991 Jan. 30	1991 Jan. 31	1991 Feb. 1	This week	Last week	1991 Jan.
Federal Funds (effective) ^{1 2 3}	7.61	7.16	6.95	8.18	6.30	7.46	6.88	6.91
Commercial paper ^{4 5}								
1-Month	6.88	6.96	6.95	6.99	6.73	6.90	6.83	7.12
3-Month	6.92	6.96	6.94	6.95	6.67	6.89	6.92	7.10
6-Month	6.87	6.91	6.88	6.88	6.58	6.82	6.86	7.02
Finance paper placed directly ^{4 6}								
1-Month	6.76	6.85	6.83	6.83	6.55	6.76	6.68	6.95
3-Month	6.75	6.83	6.83	6.76	6.46	6.73	6.77	6.92
6-Month	6.53	6.53	6.59	6.53	6.19	6.47	6.55	6.59
Bankers acceptances (top rated) ^{4 7}								
3-Month	6.80	6.82	6.77	6.68	6.30	6.67	6.76	6.96
6-Month	6.67	6.70	6.65	6.55	6.15	6.54	6.63	6.84
CDS (secondary market) ^{3 8}								
1-Month	6.78	6.85	6.87	6.82	6.52	6.77	6.77	7.10
3-Month	6.94	6.95	6.93	6.86	6.51	6.84	6.94	7.17
6-Month	6.95	6.98	6.95	6.88	6.51	6.85	6.97	7.17
Eurodollar deposits (London) ^{3 9}								
1-Month	6.81	6.88	6.88	6.88	6.88	6.86	6.81	7.13
3-Month	6.94	7.06	7.00	6.94	6.94	6.98	7.01	7.23
6-Month	7.00	7.00	7.00	6.94	6.94	6.98	7.04	7.23
Bank prime loan ^{2 3 10}	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.52
Discount window borrowing ^{2 11}	6.50	6.50	6.50	6.50	6.00	6.50	6.50	6.50
U.S. Government securities								
Treasury bills								
Auction average ^{3 4 12}								
3-Month	6.22					6.22	6.14	6.30
6-Month	6.28					6.28	6.21	6.34
1-Year								6.22
Auction average (investment) ¹²								
3-Month	6.41					6.41	6.32	6.49
6-Month	6.58					6.58	6.50	6.64
Secondary market ^{3 4}								
3-Month	6.25	6.22	6.20	6.19	6.00	6.17	6.12	6.22
6-Month	6.26	6.26	6.24	6.20	5.97	6.19	6.20	6.28
1-Year	6.24	6.20	6.17	6.13	5.91	6.13	6.19	6.25
Treasury Constant maturities ¹³								
1-Year	6.64	6.59	6.56	6.51	6.27	6.51	6.58	6.64
2-Year	7.12	7.10	7.07	7.05	6.83	7.03	7.09	7.13
3-Year	7.38	7.35	7.34	7.30	7.10	7.29	7.35	7.38
5-Year	7.67	7.64	7.64	7.62	7.45	7.60	7.66	7.70
7-Year	7.93	7.90	7.90	7.89	7.75	7.87	7.92	7.97
10-Year	8.06	8.05	8.05	8.03	7.91	8.02	8.04	8.09
30-Year	8.23	8.20	8.23	8.21	8.09	8.19	8.22	8.27
Composite								
Over 10 years (long-term) ¹⁴	8.29	8.26	8.29	8.27	8.15	8.25	8.28	8.33
Corporate bonds								
Moody's Seasoned								
AAA	9.03	9.01	9.00	8.99	8.96	9.00	9.05	9.04
BAA	10.43	10.37	10.35	10.33	10.24	10.34	10.44	10.45
A-Utility ¹⁵					9.65	9.65	9.80	9.83
State and local bonds ¹⁶				7.00		7.00	7.06	7.08
Conventional mortgages ¹⁷					9.56	9.56	9.61	9.64

Footnotes:

- ¹ The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.
- ² Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.
- ³ Annualized using a 360-day year or bank interest.
- ⁴ Quoted on a discount basis.
- ⁵ An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent.
- ⁶ An average of offering rates on paper directly placed by finance companies.
- ⁷ Representative closing yields for acceptances of the highest rated money center banks.
- ⁸ An average of dealer offering rates on nationally traded certificates of deposit.
- ⁹ Bid rates for Eurodollar deposits at 11 a.m. London time.
- ¹⁰ One of several base rates used by banks to price short-term business loans.
- ¹¹ Rate for the Federal Reserve Bank of New York.
- ¹² Auction date for daily data; weekly and monthly averages computed on an issue-date basis.
- ¹³ Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.
- ¹⁴ Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years, including one very low yielding "flower" bond.
- ¹⁵ Estimate of the yield on a recently offered, A-rated utility bond with a maturity of 30 years and call protection of 5 years; Friday quotations.
- ¹⁶ Bond Buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.
- ¹⁷ Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

NOTE: Weekly and monthly figures are averages of business days unless otherwise noted.

Description of the Treasury Constant Maturity Series

Yields on Treasury securities at "constant maturity" are interpolated by the U.S. Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of quotations reported by five leading U.S. Government securities dealers to the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed

maturities, currently 1, 2, 3, 5, 7, 10, and 30 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

Dated: July 3, 1991.

George E. Pratt,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 91-18128 Filed 8-5-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 91-8]

National Bank Lending Limit

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (the "OCC") is amending its lending limit regulation, 12 CFR part 32, by adopting a revised version of a temporary rule published on June 24, 1988 (53 FR 23752). This final rule states that a legally binding written loan commitment qualifies as a loan and can be funded during its entire term, even if a bank's lending limit subsequently declines, provided that the commitment, when combined with a borrower's other outstanding loans and unfunded commitments qualifying as loans, is within the bank's lending limit at the time the commitment is made.

The final rule also permits a bank that has reached its lending limit with respect to a particular borrower through the combination of outstanding loans and unfunded commitments qualifying as loans, to make a subsequent loan to the same borrower without violating the lending limit. If the bank extends such an additional loan to the same borrower in excess of the lending limit, the rule provides that a loan commitment which qualified for funding as a loan automatically will be disqualified from being treated as a loan, and will revert to being treated as a loan commitment. A subsequent loan will operate to disqualify the entire unfunded portions of prior qualifying loan commitments in reverse chronological order. Disqualified commitments need not be included in a bank's lending limit calculation until funds are advanced.

In addition, the final rule provides that the OCC will not take administrative action against banks for a violation of 12 U.S.C. 84 caused by application of the temporary rule to loans and extensions of credit made from the date the temporary rule

became effective until the effective date of the final rule.

The final rule is intended to provide appropriate relief to banks which have suffered a decline in capital, without imposing undue constraints on the ability of all national banks to manage their ordinary lending relationships with borrowers.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah Katz, Senior Attorney, Legal Advisory Services Division (202) 874-5330; or William C. Kerr, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874-5070.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1988, the OCC published a temporary rule addressing the treatment of loan commitments under the lending limit applicable to national banks (53 FR 23752). The temporary rule permitted a bank to fully fund a legally binding written loan commitment that was within the bank's lending limit when made, as though it were a loan from the date of execution, even if the bank's lending limit subsequently declined during the original term of the loan commitment.

Although the temporary rule was made effective on publication, the regulation contained a 90-day comment period that closed on September 22, 1988. In response to comments objecting to the effect of the temporary rule on banks that had not experienced a decline in capital, an amendment was proposed. See 54 FR 30054 (July 18, 1989).

Under the proposal, a bank that has reached its lending limit with respect to a particular borrower, through the combination of outstanding loans and unfunded commitments which qualified as loans, would be permitted to extend additional loans to that borrower. However, should a bank choose to extend such additional loans to the borrower in an amount which exceeds the bank's lending limit, the bank will no longer be permitted to fully fund certain prior loan commitments if its lending limit declines. These loan commitments may be funded only to the extent that any advance under the commitment

does not exceed the bank's lending limit on the date of funding.

The Final Rule

I

To achieve the flexibility desired, the final rule retains the following provisions initially introduced in the temporary rule: A legally binding written commitment will qualify as a loan and may be funded, even if a bank's capital subsequently declines, provided that the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit on the date it is executed. Other types of commitments, including oral commitments, and legally binding written loan commitments which, when combined with all other outstanding loans and qualifying commitments to the borrower, exceed the bank's lending limit on the date of execution, will not qualify as loans and may not be fully funded if the amount of the bank's capital should subsequently decrease. See 53 FR 23752 (June 24, 1988). Such commitments may be funded only if, on the date of funding, monies advanced combined with all other outstanding loans and qualifying commitments to the borrower, would not exceed the bank's lending limit.

As explained in the preamble to the temporary rule, during the original term of a qualifying loan commitment, a bank will not be regarded as having violated section 84 when it fully funds such a commitment, even though such funding may result in total obligations outstanding to a borrower in excess of the bank's lending limit on the date of funding. Instead, the excess credit will be deemed "nonconforming" for the purposes of section 84. A bank may not advance additional credit to a borrower whose loans with the bank have become nonconforming.

For a numerical example, assume that in June 1988, the bank has a lending limit of \$10 million and one loan of \$5 million extended to a borrower. In July, the bank enters into a loan commitment with the borrower for an additional \$5 million with a maturity of one year, to be funded at a later date. Because this loan commitment, when combined with all other outstanding loans and

qualifying commitments to the borrower, is within the bank's lending limit when it is made, the commitment qualifies as a loan.

In October, the bank's lending limit has declined to \$7 million, and the borrower requests that the bank fully fund its July loan commitment. Because the commitment qualified to be treated as a loan when made, the bank may fully fund the commitment without violating section 84, although it would then have total extensions of credit to the borrower of \$10 million. The amount extended in excess of its lending limit, \$3 million, would be deemed nonconforming. In November, the borrower requests a short term loan of \$5 million from the bank. Because the bank has nonconforming extensions of credit outstanding to the borrower, the bank may not make this loan without violating section 84.

II

As noted in the preamble to the proposed amendment, the OCC regards the expiration of an unfunded or partially funded loan commitment, or any restructuring of a commitment, as an opportunity for a bank to bring that commitment into conformance with the bank's then-applicable lending limit. See 54 FR 30054, 30056 (July 18, 1989). Consistent with the OCC's general policy with regard to loan renewals, the bank must make every effort to bring a loan into conformance with the bank's lending limit, for example, by having the debtor partially repay the loan or by securing another bank's participation in the loan.

Where it is not practicable for the bank, after the exercise of its best efforts, to bring the previously funded portion of a loan commitment within its lending limit, the funded portion, including any excess credit above the lending limit, may be renewed. The OCC will not consider the loan renewal to be a violation of law leading to possible director liability. Upon renewal, any excess credit will be deemed "nonconforming" rather than a violation of the bank's lending limit. Again, the bank must continue to exercise best efforts to bring the excess credit into conformance with the lending limit, thus the excess portion of a commitment could not be renewed as a revolving credit.

On the other hand, the renewal of an unfunded commitment in excess of the bank's lending limit, or the renewal of the unfunded portion of a loan commitment in excess of the bank's lending limit, will be treated as would any loan commitment exceeding the bank's lending limit. Such a renewal will

not by itself constitute a violation of section 84. A violation of section 84 will only occur if, on the date of funding, the borrower is advanced funds under the commitment which exceed the bank's lending limit. When a bank is requested to enter into such a commitment, prudent banking practice would dictate that the bank take precautions to include a clause in the loan agreement which will release it from its obligation, if funding the loan commitment would result in a violation of the lending limit.

To illustrate the requirements for the renewal and restructuring of unfunded or partially funded qualifying loan commitments, assume that in June 1988, a borrower and a bank entered into a legally binding, written, loan commitment for \$10 million, with a maturity of one year, at a time when the bank's lending limit was \$10 million. Because the borrower had no other outstanding obligations, and the commitment was within the bank's lending limit when made, the commitment qualified as a loan. During the course of the year, the bank advances only \$7 million to the borrower under the qualifying commitment.

By June 1989, the bank's lending limit has decreased to \$5 million. Upon expiration of the commitment, if the borrower requests that the entire commitment be renewed, the bank must first exercise best efforts to bring the \$7 million into conformance with its lending limit of \$5 million. If the bank is unable to do so, the funded portion may be renewed for \$7. Upon renewal, \$2 million of the funded portion will be deemed nonconforming rather than a violation of section 84.

If the borrower requests that the bank renew its commitment as a revolving credit, the bank will be permitted to renew only \$5 million, an amount within its lending limit, as a revolving credit. Such a position is consistent with the OCC's policy that a bank must exercise its best efforts to bring the funded portion of a loan commitment into conformance with the lending limit, which in this example is \$5 million.

The renewal of the unfunded \$3 million portion, in excess of the lending limit, will not by itself constitute a violation of section 84. A violation of section 84 will occur, however, if the borrower is advanced funds under the commitment which exceed the bank's lending limit on the date of funding.

III

The final rule also adopts elements of the proposed amendment which reintroduced flexibility into the approach discussed above. This change

is being adopted in response to several commenters on the temporary rule who had observed that once a commitment qualified as a loan under the temporary rule, it would have to be included by the bank in computing its lending limit for all subsequent loans to the borrower. Consequently, a bank with outstanding loan commitments to a borrower could reach its lending limit without actually having advanced funds to the borrower. Such a bank would not be able to extend an additional loan to a borrower without violating section 84. Thus, the temporary rule prevented banks from making some extensions of credit which could have been made prior to the issuance of the temporary rule.

The final rule permits those commitments, which automatically qualify as a loan, to be disqualified. A qualifying commitment may be disqualified from being deemed a loan if, after entering into a qualifying commitment, the bank makes an additional loan or an extension of credit to the borrower which exceeds the bank's lending limit when combined with all other outstanding loans and qualifying commitments to the borrower. See 54 FR 30054, 30057.

Once a qualifying commitment has been disqualified from being considered a loan, it will revert to being treated as a loan commitment. Thus, a disqualified loan commitment may be funded only to the extent that any advance under the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, does not exceed the bank's lending limit on the date of funding.

Note that, where a bank enters into a loan commitment in excess of its lending limit subsequent to executing a qualifying commitment, the execution of the non-qualifying commitment will not, by itself, disqualify an earlier qualifying commitment to lend. However, advances of funds under such a non-qualifying loan commitment could disqualify an earlier qualifying commitment.

As an example of the concept of disqualification, assume a national bank has a stable lending limit of \$10 million throughout 1988. After having extended a loan to a borrower of \$5 million in June, the bank enters into a legally binding written loan commitment with the borrower for an additional \$5 million in July, to be funded at a later date. Because this loan commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit when it is made, the commitment qualifies as a loan for lending limit

purposes. Unless it is disqualified, this loan commitment may be fully funded during its original term, notwithstanding a subsequent decline in the bank's lending limit.

In August, after entering into the above-referenced loan commitment but before it is funded, the borrower requests an additional loan of \$1 million from the bank; this loan is not related to the qualifying loan commitment. If the bank makes this loan, the total outstanding loans and qualifying commitments to the borrower, including the amount of the unfunded loan commitment, will total \$11 million, exceeding the bank's lending limit. Under the temporary rule, the bank would have violated section 84 upon extending this \$1 million loan to the borrower. Under this final rule, however, the bank will not violate section 84.

Under the final rule, the bank may elect to extend the \$1 million loan, thereby disqualifying the unfunded loan commitment made in July. The disqualified loan commitment could then be funded only to the extent that any advance under the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, did not exceed the bank's lending limit on the date of funding. Thus, if the borrower seeks advances under the loan commitment after having received the \$1 million short term loan, the bank may advance only \$4 million under the commitment without violating section 84. Of course, the bank may attempt to sell participations for the remaining \$1 million of the commitment.

If the borrower had requested a second loan commitment of \$1 million in August, rather than a loan, the July loan commitment would not have been disqualified. As noted above, the final rule provides that a qualifying loan commitment may only be disqualified by a subsequent loan or extension of credit which would cause the bank to exceed its lending limit when combined with all other outstanding loans and qualifying commitments to the borrower. A loan commitment of \$1 million, entered into in August, would not have qualified as a loan and therefore would not have disqualified the July loan commitment.

IV

The final rule also clarifies which commitments among a bank's qualifying commitments will be disqualified when a loan or extension of credit is extended to a borrower, causing the bank to exceed its lending limit. The proposed amendment stated:

A qualifying commitment to lend will be disqualified by any loan or extension of credit made subsequent to the date of the qualifying commitment which, when combined with all other outstanding loans (including other binding commitments) attributable to the borrower, would cause the total to exceed the bank's lending limit on the date of the loan or extension of credit.

See 54 FR 30054, 30059.

The OCC intended this language to require disqualification of the entire unfunded portion of the loan commitment entered into most recently prior to the loan or extension of credit which causes the total amount of outstanding loans and qualifying commitments attributable to a borrower to exceed the bank's lending limit. Moreover, if the amount of the loan or extension of credit causing the total amount of obligations attributable to a borrower to exceed the bank's lending limit is greater than the amount of the most recent prior loan commitment, other loan commitments will be disqualified in reverse chronological order.

For example, assume that a bank has had a stable lending limit of \$10 million since 1988. In 1989, the bank entered into successive binding written loan commitments with a borrower of \$2 million in January, \$3 million in February, and \$4 million in March, totalling \$9 million. In December, if the bank grants to the borrower an extension of credit of \$2 million pursuant to a new loan, the entire loan commitment of \$4 million made in March, which most recently preceded the December extension of credit, will be disqualified. If, instead, the bank grants to the borrower an extension of credit of \$6 million, both the preceding \$4 million commitment made in March, and the \$3 million loan commitment made in February will be disqualified.

Comments on the Proposed Amendment

The OCC received ten comment letters on the proposed amendment. All of the commenters acknowledged that the proposed amendment corrected the problem encountered by national banks and other financial institutions subject to the provisions of section 84 which did not suffer a decline in capital. The commenters noted that the temporary rule had prevented healthy banks from making some extensions of credit which they could have previously made. The commenters approved of the approach in the proposed amendment which grants to banks that have entered into loan commitments that were within the banks' lending limit when made the ability to choose whether such commitments will be treated as loans.

Nine of the commenters recommended that the proposed amendment be adopted because it assists banks with declining capital, without penalizing healthy banks. One of the commenters strongly supported the implementation of a modified transition period, noting that some lending practices may need to be modified to achieve full compliance with the final rule.

The tenth commenter credited the OCC for recognizing that the temporary rule imposed additional burdens upon banks. However, the commenter stated that certain further refinements would be appropriate. This commenter noted that the proposed amendment appeared to take the position that once a commitment which qualified as a loan had been disqualified, it could not once again become a "qualifying commitment." The commenter strongly recommended that once the funding which caused the qualifying commitment to be disqualified had been repaid, the OCC should permit the disqualified commitment to be "rehabilitated (i.e., again may become qualifying)" at least to the extent of then available capital and surplus.

The OCC examined the issue of rehabilitation, or re-qualification of disqualified loan commitments, prior to the publication of the proposed amendment. After considering several regulatory models, the OCC concluded that rehabilitation could permit a bank to manipulate its lending limit. Further, both banks and borrowers would find monitoring of the lending limit difficult, should rehabilitation be permitted. Hence, the policy set forth in the proposed amendment, which does not permit rehabilitation, is adopted in this final rule.

The tenth commenter also objected to a provision in the proposed amendment which requires that "in determining whether a commitment would cause the bank to exceed its limit on the date of the commitment, the amount of a legally binding written commitment to participate in the loan commitment by another financially responsible person or institution may be deducted." See 54 FR 30056. The commenter noted that the question of financial responsibility of the participant counterparty is more appropriately addressed by existing statutes giving the Comptroller authority to examine the "safety and soundness" of the banking system. This commenter stated that "financial responsibility" should not be made part of a regulation for the violation of which a national bank and its directors may be subject to fines and personal liability."

The OCC believes that the standard of "financial responsibility" is a standard to which a bank would obviously adhere. The maintenance of this term in the regulation imposes no additional burdens upon a financial institution.

Finally, with respect to the participation provision discussed above, this commenter noted that the proposed amendment does not make clear when the OCC would determine that a written legally binding commitment had been entered into by a participant and, therefore, could be deducted from the calculation of a bank's lending limit. The commenter noted that there may be several preliminary stages where a participant may have conditionally committed to extend funds.

It is the intent of the OCC that, for purposes of the deduction of participant commitments, a bank will be deemed to have entered into a binding written commitment to lend upon execution of definitive loan documents. Hence, the proposed amendment makes use of the term "legally binding written commitment." Inasmuch as the binding nature of a commitment is a function of state law, the final rule has not been made more specific. Instead, the OCC will review participant commitments during the examination process, taking into account variations in State law and the facts and circumstances of each case.

Agency Action

The OCC has determined that the provisions of the proposed amendment provide appropriate relief to banks which have suffered a decline in capital, without imposing undue constraints on the ability of all national banks to manage their ordinary lending relationships with borrowers. In order to achieve the results intended by this revision, the final rule amends the definition of a "contractual commitment to advance funds," at 12 CFR 32.2(d), to include a "qualifying commitment to lend." Moreover, the revision adds a definition of a "qualifying commitment to lend" to the definitions provided by part 32. A "qualifying commitment to lend" is defined as any written legally binding loan commitment which, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit when made. The definition also describes the disqualification of loan commitments and the order in which loan commitments will be disqualified by a subsequent loan or extension of credit. The precise language of the new definition is set forth below.

In addition to the substantive revision of the temporary rule, the OCC is

implementing a modified transition period. The OCC will not take administrative action to enforce violations of 12 U.S.C. 84 which occur as a result of applying the temporary rule to loans made from June 24, 1988, the date the temporary rule became effective, until the date this final rule becomes effective. The provision for a transition period will not change the effective date of the temporary rule, and will not affect the qualification as a loan of any legally binding commitment which was made in good faith prior to the effective date of the temporary rule which was within the bank's lending limit when made.

Reason for Immediate Effective Date

The OCC had proposed that the transition period extend from the date the temporary rule became effective, June 24, 1988, until 60 days after the date the temporary rule is adopted as a final rule. The final rule establishes a transition period extending from June 24, 1988, until the effective date of the final rule. The OCC has determined that it is unnecessary to extend the transition period beyond the effective date of the final rule. Upon implementation, the final rule itself will provide a remedy to banks which did not comply with the requirements of the temporary rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small banks. All banks should benefit from the regulatory clarification in this final rule which introduces additional flexibility into the lending relationships of all institutions.

Executive Order 12291

The OCC has determined that this final rule is not classified as a "major rule," within the meaning of Executive Order 12291. Consequently, a Regulatory Impact Analysis is not required on the grounds that this regulation (1) would not have an annual effect on the economy of \$100 million or more, and (2) would not result in a major increase in the cost of bank operations or government supervision.

List of Subjects in 12 CFR Part 32

National banks, Lending limit, Loan commitments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12

of the Code of Federal Regulations is amended as follows:

PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 84 and 12 U.S.C. 93a.

2. Section 32.2, paragraph (d) is revised, and a new paragraph (f) is added, to read as follows:

§ 32.2 Definitions.

(d) *Contractual commitment to advance funds* means: (1) An obligation to make payments (directly or indirectly) to a third party contingent upon default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition;

(2) An obligation to guarantee or stand as a surety for the benefit of a third party; or

(3) A qualifying commitment to lend (as defined at paragraph (f) of this section). The term includes, but is not limited to, standby letters of credit (as defined in paragraph (e) of this section), guarantees, puts or other similar arrangements.

For the purposes of this part, undisbursed loan funds and loan commitments not yet drawn upon which are not "qualifying commitments to lend," or which are not otherwise equivalent to a contractual commitment to advance funds as defined are not considered a "contractual commitment to advance funds." This definition also does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default of the account party.

(f) *Qualifying commitment to lend* means a binding written commitment to lend which, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit on the date of the commitment and which has not been disqualified. A qualifying commitment to lend will be disqualified by any loan or extension of credit made subsequent to the date of the qualifying commitment which, when combined with all other outstanding loans and qualifying commitments attributable to the borrower, would cause the total to exceed the bank's lending limit on the

date of the loan or extension of credit. A disqualified loan commitment may be funded only to the extent that any advance under the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, does not exceed the bank's lending limit on the date of funding. The entire unfunded portions of qualifying loan commitments made last will be disqualified first, in reverse chronological order, until the sum of the disqualified commitments at least equals the amount of the loan or extension of credit which caused the total amount of obligations attributable to a borrower to exceed the bank's lending limit. In determining whether the issuance of a commitment to lend would be within a bank's lending limit on the date of the commitment, the bank may deduct from the amount of the commitment the aggregate amount of legally binding written loan participations in that commitment by other financially responsible persons or institutions.

3. A new section, § 32.9, is added to read as follows:

§ 32.9 Modified transition period.

The Comptroller of the Currency will not take administrative enforcement action against a bank, its officers, directors, or employees for a violation of 12 U.S.C. 84, for loans or extensions of credit made during the period June 24, 1988, until August 6, 1991, where it is established to the satisfaction of the Comptroller of the Currency that the bank has exceeded its lending limit as the result of an unintentional misapplication of the definition of a "contractual commitment to advance funds," as it appeared in § 32.2(d) of the lending limit regulation in effect as of June 24, 1988, until August 6, 1991.

Dated: July 30, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-18548 Filed 8-5-91; 8:45 am]

BILLING CODE 4810-33-M

**NATIONAL CREDIT UNION
ADMINISTRATION**

12 CFR Part 701 and 741

**Requirements for Insurance and Eligible
Obligations**

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Notice of correction of effective
date.

SUMMARY: This notice corrects and
clarifies that August 28, 1991 is the

effective date for a final rule previously
published in the *Federal Register* July 29,
1991 (56 FR 35808) concerning
§§ 701.23(b)(2), 741.3, and 741.4 of the
NCUA Rules and Regulations. On page
35808, second column, "DATES" should
read "EFFECTIVE DATE."

FOR FURTHER INFORMATION CONTACT:
Martin E. Conrey, Staff Attorney, Office
of General Counsel, (202) 682-9630.

By the National Credit Union
Administration Board on August 1, 1991.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-18578 Filed 8-5-91; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AB87

**Eligibility of Organizations for the
Handicapped for Small Business Set-
asides**

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business
Administration (SBA) amends its
regulations to enlarge the class of
organizations eligible for award of Small
Business Set-Aside contracts to include
public and private organizations for the
handicapped, to define the terms under
which such organizations may qualify
for such awards, and to provide
methods to consider protests of
eligibility of organizations for the
handicapped or appeals of small
businesses alleging prospective severe
economic injury if a specific award is
made to an organization for the
handicapped.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT:
Catherine Thomas, Procurement
Analyst, 202/205-6465.

SUPPLEMENTARY INFORMATION: This
regulation implements section 133 of the
Small Business Administration
Reauthorization and Amendment Act of
1988 (Public Law 100-590). Section 133
enlarged eligibility for award of Small
Business Set-Aside contracts to include
public and private organizations for the
handicapped. Small Business Set-Asides
are procurements in which competition
is restricted to firms which qualify as
small businesses under the definitions
established by SBA. In addition to
expanding eligibility for these set-
asides, the law defines the terms under
which the organizations may qualify for
such awards; and, also establishes a
right of appeal for small businesses

which experience, or are likely to
experience "severe economic injury" as
the result of a proposed award to an
organization for the handicapped. The
method which has been determined by
SBA to be the most suitable means for
alleviating severe economic injury is to
assure that the affected small business
has the opportunity to win award of the
contract in question. This is the method
for fulfilling the statutory obligation
which is least disruptive to the
procurement process. It is therefore SBA
policy, when severe economic injury is
found, to seek award of the contract
without regard to offers by
organizations for the handicapped.

The Small Business Administration
published an interim final rule
implementing this statute on January 31,
1990, in the *Federal Register* (Vol. 55,
No. 21, p. 3201). However, as a result of
the application of that rule, SBA
determined that § 121.2005, which
established the procedure for a small
business to appeal the award of a
contract to an organization for the
handicapped, required a substantial
revision. As currently written, any small
business that was the otherwise
apparent successful offeror on a
solicitation could automatically
establish severe economic injury if the
contract would have represented at
least 25 percent of its annual receipts for
the last completed fiscal year. If severe
economic injury is determined, award
would be made to the small business.
This would most likely result in no
awards being made to organizations for
the handicapped. Section 133 of Public
Law 100-590 clearly manifested the
intent of Congress that organizations for
the handicapped be eligible to receive
small business set-asides. To remedy
this problem, SBA substantially revised
§ 121.2005. Because we made major
changes to the procedures established in
the interim final rule, SBA published a
proposed rule on October 5, 1990 (Vol.
55, No. 194, pg. 40847), and invited public
comment on § 121.2005.

SBA received four comments as a
result of the interim final rule published
January 30, 1990. These comments were
addressed in the proposed rule of
October 5, 1990. Three comments were
received in response to the proposed
rule of October 5, 1990.

**Overview of Public Comments and
SBA's Responses Thereto**

SBA received a request from a small
business that public and private
organizations for the handicapped not
be made eligible to participate in the
small business set-aside program. SBA

cannot adopt this suggestion because this is a statutory requirement.

Goodwill Industries of America reiterated its prior objection that the rule unnecessarily restricts the remedies available when SBA determines that severe economic injury has occurred or is likely to occur as the result of an award of a small business set-aside to an organization for the handicapped. SBA gave this considerable thought before publishing the interim final rule, and again before publishing the proposed rule, and we have determined that award to the small business concern in cases where severe economic injury has been determined is the only reasonable means to assure direct alleviation of the injury. The other alternatives impose a great administrative burden on the procuring activity and interfere with prompt and efficient procurement processes.

A commenter requested that an organization for the handicapped be allowed more than three business days to submit the required documentation to the SBA. SBA cannot adopt this comment. It was determined that these procedures would be consistent with the procedures for size determinations and not cause additional delay in awarding the contract.

A commenter requested that SBA give equal consideration to the negative impact a decision to take away a contract from an organization for the handicapped might have on that particular organization and the persons with disabilities employed under the contract. SBA cannot adopt this comment. The statute authorizes SBA to grant relief to a small business suffering severe economic injury as a result of a proposed award to an organization for the handicapped. While organizations for the handicapped are eligible for small business set-asides, they are not small business concerns. The statute did not authorize SBA to provide such relief to organizations for the handicapped.

A commenter requested that SBA work with national organizations such as NARF, Goodwill Industries of America and Easter Seals to help educate organizations for the handicapped on how to bid on small business set-aside contracts. SBA would agree to provide assistance to such national organizations; however, we do not have the resources, nor the statutory charter, to undertake a training program of this kind, especially in light of the fact that organizations for the handicapped are not small business concerns. The SBA has agreed to provide information on training/seminars to the Committee for Purchase from the Blind and Other

Severely Handicapped as it becomes available to us.

Section by Section Review

Section 121.2001 describes the underlying policy of permitting public and private organizations for the handicapped to participate in Federal procurements which are set-aside for small business. It notes the total dollar limits on such participation. It also describes an appeal right which the SBA Reauthorization Act provides for small businesses which experience or are likely to experience severe economic injury as a result of award of set-asides to such organizations. Such small businesses may appeal the award to SBA. The final agency decision on the appeals will be made by the Associate Administrator for Procurement Assistance as the delegatee of the Administrator.

Section 121.2002 provides definitions of "public or private organizations for the handicapped" and "handicapped individual". Although Public Law 100-590 provided that the definition for public and private organizations for the handicapped would be as set forth in section 3(e) of the Small Business Act the definition contained in this rule omits the portion of the statutory definition found in subparagraph 3(e)(3). This omission is required because subparagraph 3(e)(3) provides limitations on the organizations in terms of financial assistance, which is not involved in contract awards. Additionally, the portion of subparagraph 3(e)(3) which requires that 75 per cent of the labor be performed by handicapped individuals, is separately addressed in Public Law 100-590, and separately implemented in this proposed rule by § 121.2003.

In § 121.2003 the eligibility of sheltered workshops for Small Business Set-Asides is established, including the requirement that at least 75 per cent of the direct labor performed on each item being produced, or on each type of service being performed, must be performed by handicapped individuals. This section also notes that organizations for the handicapped cease to be eligible for such set-asides when the aggregate limits for such awards during a fiscal year have been reached.

The procedure for protesting the eligibility of sheltered workshops is described in § 121.2004. These rules are modeled on long-established rules for protesting the small business status of another offeror on a Federal procurement. The essential differences are that the determinations would be made at the Central Office of the SBA, rather than at a regional office; the

Committee for the Blind and Other Severely Handicapped would be consulted; and, the determination would be the final administrative remedy. The section also describes the documentation which will establish the eligibility of an organization for the handicapped.

The provisions of Section 121.2005 describe the process for appeal of awards to organizations for the handicapped by small businesses who allege severe economic injury has been or will be suffered as a result of award of a contract to an organization for the handicapped. There are no changes to this section from the proposed rule published on October 5, 1990. Reasonable grounds for appeal are described and a presumption is established that 25 per cent or more of a small business' annual receipts is "severe". The level of 25 per cent has been selected because, in the absence of other persuasive data, it conforms to the level selected for SBA's "8(a)" program which also conducts reviews of economic impact upon competing candidates for contracts. The procedure for appeal is again modeled on the process for protesting small business status but would include a 10-day period for filing appeals, as set forth in the law. The remedy provided is the only reasonable means to assure direct alleviation consistent with the reasonable needs for prompt and efficient Federal procurement processes. Here, also, determinations will be made at the Central Office of the SBA and will be the final administrative remedy.

Compliance With Executive Orders 12291 and 12612, the Administrative Procedure Act (5 U.S.C. 551 et. seq.), the Regulatory Flexibility Act (55 U.S.C. 601, 601, 3et seq.), and the Paperwork Reduction Act (44 U.S.C. chap. 35)

SBA has determined that this rule does not constitute a major rule for purposes of Executive Order 12291 because the annual effect on the economy will not exceed \$100 million. The statutory limit on the program does not exceed \$50 million in any one year and SBA's previous experience with a similar program showed less than \$10 million to be involved.

SBA certifies that this rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., SBA certifies that this rule will not have a significant effect on a substantial number of small entities. While it is possible that 10 or more

small entities might use these appeal procedures, such a contingency is not anticipated.

For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA certifies that this rule will impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Small businesses, Standard industrial classification codes.

For the reasons set forth above, part 121 of title 13, Code of Federal Regulations (CFR) is amended as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

2. Subpart B is revised to read as follows:

Subpart B—Other Eligibility Provisions

Eligibility of Organizations for the Handicapped for Small Business Set-Asides

- 121.2001 Statutory Basis.
- 121.2002 Definitions.
- 121.2003 Eligibility.
- 121.2004 Protest of eligibility.
- 121.2005 Appeal of economic impact.

Eligibility of Organizations for the Handicapped for Small Business Set-Asides

§ 121.2001 Statutory Basis.

(a) The Small Business Act as amended by Public Law 100-590 provides that public or private organizations for the handicapped shall be eligible to participate in Federal procurements which are set aside for small business, during fiscal years 1989 through 1993, in aggregate amounts of not more than \$30,000,000 in 1989; \$40,000,000 in 1990; and \$50,000,000 each year in 1991 through 1993.

(b) That law further provides for appeal to SBA of such an award when a small business experiences or is likely to experience severe economic injury as a result of the proposed award to an organization for the handicapped. Any eligible concern wishing to appeal must file its appeal with the SBA within 10 days after the announcement of the proposed award to which the appeal relates. SBA is afforded 30 days from the date the appeal is filed to consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

§ 121.2002 Definitions.

(a) *Organization for the handicapped* means a public or private entity:

(1) Which is organized under the laws of the United States or any state, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and,

(2) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor.

(b) *Handicapped individual* means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

§ 121.2003 Eligibility.

Organizations for the handicapped shall be eligible for award of contracts set aside for small business provided that:

(a) The workshop meets the definition in § 121.2002(a);

(b) At least 75 per centum of the direct labor performed on each item being produced by the organization for the handicapped under the contract or performed in providing each type of service under the contract is performed by handicapped individuals; and,

(c) The maximum allowable amount of such awards for the applicable fiscal years has not been reached.

§ 121.2004 Protest of eligibility.

(a) *Who may protest.* A responsive offeror, the affected contracting officer, or the Small Business Administration may protest the status of an offeror as an organization for the handicapped eligible for participation in small business set-asides.

(b) *Grounds for protest.* Protests must include specific information which tends to show that the protested organization does not meet the eligibility criteria set forth in §§ 121.2002 and 121.2003.

(c) *Procedure for protest.* (1) Protests shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Procurement Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of protests under this section.

(2) Protests, including copies, shall be delivered by hand, telegram or be placed in the U.S. mail prior to the close of business on the fifth working day after bid opening or, in the case of a negotiated procurement, the fifth working day after receipt of notification

of the identity of the apparent successful offeror.

(3) The Associate Administrator for Procurement Assistance shall notify the protested organization in writing that a protest concerning its eligibility for small business set-asides has been presented.

(4) The protested organization shall deliver required documentation, with any other documentation or information it wishes SBA to consider within three business days of receipt of written notification of the protest. See paragraphs (d) and (e) of this section. If the protested organization is a workshop participating under the Javits-Wagner-O'Day Program, the required documentation may be delivered by the Committee for Purchase from the Blind and Other Severely Handicapped which maintains workshop eligibility documentation on file in its offices. Delivery may be made by hand, telegram or placement in the U.S. mail.

(5) The Associate Administrator for Procurement Assistance shall consult with the Executive Director of the Committee for Purchase from the Blind and other Severely Handicapped before rendering a determination.

(6) SBA shall, within ten business days of receipt of a protest, notify parties, including the contracting officer, of its decision. Notification will be considered complete upon hand delivery, receipt of a telegram, or placement in the U.S. mail.

(7) The eligibility determination by the Associate Administrator shall be the final Agency action with respect to such protests.

(8) Failure to submit any documentation required to resolve a protest may be grounds for resolution of the protest against the non-submitting party.

(d) *Required documentation to demonstrate eligibility.*

Except as provided in paragraph (e) of this section, the following documentation, where applicable, will be required to demonstrate the eligibility of an organization:

(1) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(2) A copy of the bylaws certified by an officer of the corporation.

(3) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual, one of the following documents:

(i) A certified copy of the State statute under which the workshop was incorporated which includes wording to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual.

(ii) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual.

(iii) A copy of the Internal Revenue Service certificate, duly executed during the prior twelve months, indicating that the corporation has been accepted as a non-profit agency for taxation purposes.

(e) A State-owned or State-operated workshop for the blind or other severely handicapped shall demonstrate its eligibility by submitting the following documents:

(1) A certified copy of the State statute establishing or authorizing the establishment of workshop(s) for the handicapped.

(2) In the case of a wholly-owned State corporation, a certified copy of the corporation bylaws; and, in the case of a State agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the workshop, or other similar documents.

§ 21.2005 Appeal of economic impact.

A proposed award of a small business set-aside to an organization for the handicapped may be appealed to SBA if a small business concern has experienced or is likely to experience severe economic injury as the result of the proposed award.

(a) *Who may appeal.* Those eligible to appeal are:

(1) A small business concern making an offer on the solicitation which is or was the incumbent contractor on a predecessor contract for the services or products being solicited; or,

(2) A small business concern offering on the solicitation which was the otherwise apparent successful offeror on a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show, absent competition by organizations for the handicapped, the incumbent contractor is likely to receive the instant award, and

(i) That the dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year.

(2) Offerors appealing on the grounds of prior small business set-aside contract awards to organizations for the handicapped must show, absent competition by organizations for the handicapped, such offeror is likely to receive the instant award; and,

(i) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year, and

(ii) The dollar amount of the prior small business set-aside contract awarded to an organization for the handicapped for which the concern was the otherwise apparent successful offeror represented at least 25 percent of its annual receipts for the fiscal year in which the contract was awarded. If the fiscal year in which the prior contract was awarded to an organization for the handicapped is not yet completed, the award must represent at least 25 percent of the small business concern's most recently completed fiscal year.

(c) *Procedure for appeal.* (1) Appeals shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Procurement Assistance, Small Business Administration, 1441 L Street NW., room 600, Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of appeals under this section.

(2) Appeals including copies, shall be delivered by hand, telegraph, or placed in the U.S. mail, by the close of business of the tenth calendar day after opening of bids or, in the case of negotiated procurements, after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator shall consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped and shall resolve the appeal within ten working days after its receipt.

(4) The Associate Administrator shall, within ten working days of receipt of an appeal, notify appellants and affected contracting officers of SBA's decision and require the contracting officer to proceed with award or to make an award without regard to offers by organizations for the handicapped. Notice shall be complete upon hand delivery, delivery by telegram or placement in the U.S. mail.

(5) The decision by the Associate Administrator shall be the final agency action with respect to such appeals.

Dated: May 31, 1991.

Patricia Saiki,
Administrator.

[FR Doc. 91-17311 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-50; Special Conditions No. 25-ANM-46]

Special Conditions; Learjet Inc., Model 31A Airplane; Lightning and High Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Learjet Inc., Model 31A airplane. This airplane is equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (206) 227-2145.

Background

On September 13, 1990, Learjet Inc., applied for an amendment to their type certificate No. A10CE to include their new Model 31A airplane. The Model 31A, which is a derivative of the Lear Model 31 currently approved under T.C. No. A10CE, is a pressurized 10-passenger transport category airplane with a maximum takeoff gross weight of 15,500 pounds, (16,500 optional), maximum operating speed V_{mo}/M_{mo} of 325 KIAS/.81M, and maximum operating altitude of 51,000 feet. It is powered by two Garrett TFE-731-2-3B turbofan engines mounted on the aft fuselage. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, five tube electronic flight instrument systems (EFIS), dual attitude and heading reference systems (AHRS), dual air data computers, dual autopilot/flight directors, and digital electronic engine

controls (DEEC), that may be vulnerable to lightning and external high-intensity radiated fields (HIRF).

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Learjet Inc., must show that the Model 31A meets the applicable provisions of Subchapter C in effect on the date of application for the amended TC unless: (1) otherwise specified by the Administrator; or (2) compliance with later effective amendments is elected or required under § 21.17; and (3) special conditions are prescribed by the Administrator. The certification basis for the Model 31A is as follows:

Part 25 of the FAR, effective February 1, 1965, as amended by Amendments 25-2, and 25-4. In addition, Amendments 25-3, 25-7, 25-10, 25-12, 25-18, 25-21, and 25-30; § 25.955(b)(2), as amended by Amendment 25-11; § 25.954, as amended by Amendment 25-14; §§ 25.803(e), 25.811(f), 25.853(a), 25.853(b) and 25.855(a), as amended by Amendment 25-15; § 25.1359, as amended by Amendment 25-17; § 25.785(c), as amended by Amendment 25-20; §§ 25.25, 25.113, 25.145, 25.251, 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303(a)(1), 25.1303(a)(3), 25.1303(b), 25.1303(c), 25.1307, 25.1331, and 25.1585(c), as amended by Amendment 25-23; §§ 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6), as amended by Amendment 25-36; §§ 25.45 through 25.75 deleted; §§ 25.101, 25.181, 25.815, 25.1303(a)(2), 25.1322, 25.1403, and 25.1439, as amended by Amendment 25-38; §§ 25.903(e), 25.939, and 25.943, as amended by Amendment 25-40; § 25.1335, as amended by Amendment 25-41; §§ 25.29, 25.143(b), 25.147, 25.177, 25.181, 25.201, 25.207, 25.233, 25.237, 25.255, and 25.703, as amended by Amendment 25-42; § 25.1326, as amended by Amendment 25-43; § 25.1329(h), as amended by Amendment 25-46; § 25.253, as amended by Amendment 25-54; §§ 25.33 and 25.961, as amended by Amendment 25-57; Part 36 of the FAR effective December 1, 1969, as amended at the time of certification; Part 34 of the FAR effective September 10, 1990, as amended at the time of certification; and Special Conditions No. 25-99-CE-14 (high altitude operation at 51,000 feet),

and Special Conditions No. 25-ANM-19 (lightning strike protection of digital electronic engine controls).

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model 31A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.18 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § 11.23 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 31A must comply with the noise certification requirements of Part 36 and the engine emission requirements of Part 34.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionics systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model 31A which require that new electrical and electronic systems, such as the EFIS, AHRS, dual air data computers, dual autopilot/flight directors, and DEEC, be designed and installed to preclude component damage and interruption of function due to both

the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke*: (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash*: (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be

carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of $\frac{1}{2}$ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and,

3. **Multiple Burst:** (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning

strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulse observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one

millisecond. The minimum time between individual Component H pulses within a burst is 10 μ s, the maximum is 50 μ s. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" ($\frac{1}{2}$ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0(e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke ($\frac{1}{2}$ component D)	Multiple burst (component H)
I_0 , amp	218,810	109,405	54,703	10,572
a, sec^{-1}	11,354	22,708	22,708	187,191
b, sec^{-1}	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak}	200 KA	100 KA	50 KA	10 KA
and (di/dt) $_{\text{max}}$ (amp/sec)	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2.0×10^{11}
di/dt, (amp/sec)	@t=0+sec 1.0×10^{11}	@t=0+sec 1.0×10^{11}	@t=0+sec 0.5×10^{11}	@t=0+sec 0.5×10^{11}
Action Integral (amp ² sec)	@t=.5 μ s 2.0×10^6	@t=.25 μ s 0.25×10^6	@t=.25 μ s $.0625 \times 10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, AHRS, and ADC, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of

protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz	80	80
500 KHz- 2 MHz	80	80
2 MHz- 30 MHz	200	200
30 MHz-100 MHz	33	33
100 MHz-200 MHz	33	33
200 MHz-400 MHz	150	33
400 MHz- 1 GHz	8,300	2,000
1 GHz- 2 GHz	9,000	1,500
2 GHz- 4 GHz	17,000	1,200
4 GHz- 6 GHz	14,500	800
6 GHz- 8 GHz	4,000	666
8 GHz- 12 GHz	9,000	2,000
12 GHz- 20 GHz	4,000	509
20 GHz- 40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R

subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-91-2-NM for the Learjet Inc. Model 31A airplane was published in the Federal Register on March 18, 1991 (56 FR 11375). No comments were received; however, the FAA inadvertently omitted, in the preamble to the Notice, part of the certification basis listed in Type Certificate Data Sheet (TCDS) A10CE. The listing of the certification basis in these final special conditions is corrected to include this information.

As a delay in issuance of these special conditions would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for making these special conditions effective upon issuance, as opposed to 30 days from the date of publication in the Federal Register.

Conclusion:

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 142 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Learjet Inc. Model 31A airplane:

1. Lightning Protection

a. Each new electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of new or modified electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each new electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 17, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18562 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-236-AD; Amendment 39-7098; AD 91-16-08]

Airworthiness Directives; Boeing Model 737 Series Airplanes Equipped With Boeing Auxiliary Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes equipped with a Boeing aft auxiliary fuel tank, which requires the deactivation of the auxiliary fuel system or accomplishment of certain inspections and modifications. This amendment is prompted by reports of uncontrollable fuel leakage into the aft cargo bay on Model 727 airplanes, due to delamination and/or cracks in the auxiliary fuel tank outer panel, which is similar in design to the Model 737. This condition, if not corrected, could result in a fire in the Model 737 aft cargo

compartment due to fuel leaking from the auxiliary fuel tank.

EFFECTIVE DATE: September 6, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2881. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes equipped with an aft auxiliary fuel tank, which requires the deactivation of the auxiliary fuel system or accomplishment of certain inspections and modifications; or incorporation of a design modification determined to be terminating action, was published in the Federal Register on February 25, 1991 (56 FR 7616).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer disagreed with the need for the proposed mandatory (terminating) modification of the fuel tanks. The manufacturer believes that the one reported case of fuel leakage in a Model 727 airplane was an isolated case; that the auxiliary fuel tank exhibits adequate fail-safety; and that, when inspected in accordance with Boeing Service Bulletin 737-28-1088, the tank will be damage tolerant. The FAA has re-evaluated its position on the proposed modification requirement, and concurs in part with the commenter. A modification has not yet been designed that meets the criteria for termination of the required inspections. In light of this, the FAA considers that the repetitive inspection program required by the rule will adequately monitor the condition of the auxiliary fuel tanks and tank structure in the interim. Although a terminating modification is not currently available, the FAA will consider proposals for such modifications under the alternative method of compliance provisions of paragraph C. of the final rule.

The manufacturer and one operator stated that the NPRM incorrectly implied that the manufacturer was currently working on a modification which, once installed, would provide terminating action for the requirements of this AD.

In addition, the manufacturer commented that five modification designs were reviewed by system experts and designers and none were determined to be feasible or workable for a variety of reasons. The FAA acknowledges the comment, but is not yet convinced that a feasible modification cannot be developed. However, since the manufacturer has yet to develop one, the FAA has deleted the proposed requirement to modify the auxiliary fuel tank, paragraph C. of the NPRM. As explained above, the inspection requirements of the rule will ensure an adequate level of safety in the interim. Once a feasible modification is developed, approved, and available, the FAA may consider further rulemaking to require installation of the terminating modification of the auxiliary fuel system.

The manufacturer also stated that the proposed rule had several typographical errors with respect to service bulletin numbers and dates. The FAA concurs. The final rule has been revised to reflect the correct service bulletin information.

In its final comment, the manufacturer pointed out that there are at least three different suppliers of auxiliary fuel tanks manufactured and used on Model 737 airplanes. By referencing the Boeing service bulletins, the proposed rule implies that the Boeing-designed-and-built tank is the subject of the Notice, but the proposal is not specific. The FAA concurs that some clarification is necessary, and has revised the final rule in the appropriate places to indicate that this AD applies only to Boeing auxiliary fuel tank installations.

Two Air Transport Association (ATA) of America member operators indicated that 31 airplanes in their combined fleets are included in the effectivity listing of the Boeing Service Bulletin, whereas, the economic impact paragraph in the preamble to the NPRM indicates that only 4 airplanes of U.S. registry would be affected by the proposed rule. These commenters requested a clarification of this point. Upon further review of the available data, the FAA concurs that the estimated number of U.S.-registered airplanes affected by the rule is greater than that which was specified in the economic analysis paragraph. The economic analysis paragraph, below, has been revised to reflect more

accurately the economic impact on the U.S. fleet.

One operator requested that proposed paragraph A.2.b. be applicable only to airplanes on which the tank and its support structure have been removed and reinstalled. As justification, this commenter noted that the incident which prompted the proposed rule occurred on a Model 727 that was not originally equipped by Boeing with an auxiliary fuel tank installation. The commenter believes that this difference is sufficient to distinguish those airplanes which need or need not be inspected. The FAA does not concur. The investigation of the cited incident did not indicate that the leakage problem was in any way exclusively associated with removal and reinstallation of the fuel tank. The FAA has determined that the fuel leakage problem is due to delamination and/or cracks in the auxiliary fuel tank outer panel; the design of these fuel cell support panels (on both the Model 727 and Model 737) is such that it does not preclude the potential for delamination and/or cracks to occur. Therefore, inspection of all airplanes equipped with an auxiliary fuel tank is warranted.

One operator requested that proposed paragraph A.2. be revised to allow either the accomplishment of the modification described in Boeing Alert Service Bulletin 737-28A1034, Revision 2, or the inspections required by proposed paragraph A.2.a. (1). The FAA does not concur. The FAA has determined that both the fuel system modification required by paragraph A.2. and the inspections required by paragraph A.2.a.(1) are necessary to prevent fuel leakage from the auxiliary fuel tank into the aft cargo compartment. As an alternative, any operator may choose to deactivate its auxiliary fuel system in accordance with paragraph A.1. of the rule.

Upon further review of the deactivation instructions outlined in Boeing Service Bulletin 737-28-1088, the FAA has determined that Boeing Alert Service Bulletin 737-28A1034 Revision 2, dated December 6, 1990, provides more detailed instructions. Therefore, paragraphs A.1 and A.2.c(2) of the final rule have been revised to reference both service bulletins as appropriate sources of service information.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative method of compliance.

The economic analysis below, has been revised to increase the specified hourly labor rate from \$40 per manhour (as was cited in the preamble to the

Notice) to \$55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 103 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 31 airplanes of U.S. registry will be affected by this AD.

For operators who elect to perform the deactivation of the auxiliary fuel system and installation of the placard, it will require approximately 16 manhours to accomplish these actions, at an average labor rate of \$55 per manhour. The cost of manufacturing a placard is expected to be negligible. Based on these figures, the total cost impact of this portion of the AD on U.S. operators is estimated to be \$880 per airplane, or \$27,280 for the U.S. fleet.

For operators who elect to perform the installation of the check and shutoff valves, and the required inspections, it will require approximately 212 manhours to accomplish these actions, at an average labor rate of \$55 per manhour. The cost of necessary installation parts is estimated to be \$10,504 per airplane. Based on these figures, the total cost impact of this portion of the AD on U.S. operators is estimated to be \$22,164 per airplane, or \$687,084 for the U.S. fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-499, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-16-08. Boeing: Amendment 39-7098.
Docket No. 90-NM-236-AD.

Applicability: Model 737 series airplanes, equipped with a Boeing aft cargo bay auxiliary fuel tank; listed in Boeing Service Bulletin 737-28-1088, dated September 6, 1990; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To reduce the potential for a fire in the aft cargo compartment due to fuel leaking from the auxiliary fuel tank, accomplish the following:

A. Within 90 days after the effective date of this AD, accomplish one of the following:

1. Deactivate the auxiliary fuel system and attach a placard in the flight compartment to indicate that the auxiliary fuel tank is inoperative, in accordance with Boeing Alert Service Bulletin 737-28A1034, Revision 2, dated December 6, 1990, or Boeing Service Bulletin 737-28-1088, dated September 6, 1990; or

2. Install a check valve and a pressure activated shutoff valve in the auxiliary fuel system near the center wing tank in accordance with Boeing Service Bulletin 737-28A1034, Revision 2, dated December 6, 1990; and perform the following inspections of the auxiliary fuel tank support structure in accordance with the inspection procedures below:

a. Within 500 flight cycles after the effective date of this AD, to detect a disbonded or cracked side panel in the auxiliary fuel tank, accomplish one of the following:

(1) Conduct an inspection of the lower sidewall (curved) panels of the auxiliary fuel tanks for disbonding, in accordance with Part I of the Accomplishment Instructions in Boeing Service Bulletin 737-28-1088, dated September 6, 1990.

(2) Perform a leak check of the auxiliary fuel tanks in accordance with Part III of

Boeing Service Bulletin 737-28-1088, dated September 6, 1990. If any fuel leakage is detected, repair prior to further flight in accordance with Part III of the service bulletin. Repeat leak check prior to each flight.

b. Within 12,000 flight cycles after the effective date of this AD, conduct an inspection of the auxiliary fuel tank and support structure in accordance with Part II of Boeing Service Bulletin 737-28-1088, dated September 6, 1990. Repeat this inspection at intervals not to exceed 12,000 flight cycles. Accomplishment of this inspection constitutes terminating action for the inspection requirements of paragraph A.2.a. of this AD.

c. If a disbonded or cracked panel is detected during the inspections required by paragraphs A.2.a. or A.2.b. of this AD, accomplish one of the following prior to further flight:

(1) Replace the panel in accordance with Part IV of Boeing Service Bulletin 737-28-1088, dated September 6, 1990; or

(2) Deactivate the auxiliary fuel tank in accordance with Boeing Alert Service Bulletin 737-28A1034, Revision 2, dated December 6, 1990; or Boeing Service Bulletin 737-28-1088, dated September 6, 1990; or

(3) Remove the auxiliary fuel tank in accordance with the Boeing 737 Maintenance Manual Subject 28-14-0.

Note: A deactivated auxiliary fuel tank will require inspections per paragraph A.2. of this AD when reactivated. Auxiliary fuel tanks that are deactivated but remain in an airplane accumulate the same number of flight cycles as the airplane.

B. Auxiliary fuel tanks currently not installed in an airplane must be inspected in accordance with Boeing Service Bulletin 737-28-1088, dated September 6, 1990, prior to installation in an airplane if they have accumulated more than 4,000 flight cycles. If any cracking or delamination is detected, repair prior to installation in an airplane.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7098, AD 91-16-08) becomes effective September 6, 1991.

Issued in Renton, Washington, on July 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18563 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined Large Harbor Tug YTB 813 to be a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 18, 1991.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that Large Harbor Tug YTB 813 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light; and

annex 1, section 3(b), pertaining to the placement of the sidelights, without interfering with its special function as a naval vessel. YTB 813 is a tug of special construction and functions. It performs towing services for naval vessels. The mast of this tug is hinged and is lowered only when actually engaged in towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on this mast, cannot be displayed. During such operations only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Judge Advocate General of the Navy has also certified that the

forementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of section 706.2 is amended by adding the following vessel under "YTB" in numerical order to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex 1	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex 1	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex 1
YTB-813	YTB-813				2.63	19.2		

3. Paragraph 14, Table Four of § 706.2 is amended by adding the following vessel in numerical order to read as follows:

Table Four

Vessel No.	Distance in meters of Aux. masthead light below minimum required height. Annex 1 § 2(a)(1).
YTB-813	6.15

Dated: July 18, 1991.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 91-18530 Filed 8-5-91; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[GA18-1-5012 FRL-3981-2]

Designation of Areas for Air Quality Planning Purposes; Georgia: Redesignation of a Georgia Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice will discuss EPA's final approval action on a March 21, 1989, request by the State of Georgia to redesignate the Atlanta carbon monoxide (CO) nonattainment area to attainment. The redesignation request is based on ambient air quality monitoring data from 1985 to 1988 and a fully implemented control strategy. The data show no violations of the CO National Ambient Air Quality Standards (NAAQS) have occurred in the Atlanta nonattainment area since the end of 1985. The redesignation request is therefore in accord with EPA policy.

EFFECTIVE DATE: This rulemaking action is effective as of September 5, 1991.

ADDRESSES: Copies of the material submitted may be examined during normal business hours at the following locations:

Region IV Air Programs Branch,
Environmental Protection Agency, 345
Courtland Street, Atlanta, Georgia
30365.

Georgia Department of Natural
Resources, 205 Butler Street,
Southeast, suite 1252, Atlanta, Georgia
30334.

FOR FURTHER INFORMATION CONTACT:

Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347-2864 or (FTS) 257-2864 and at the above address.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, Federal Register notice (43 FR 8962) the Atlanta area was designated as nonattainment for carbon monoxide (CO). The nonattainment area consists of those portions of Clayton, DeKalb, and Fulton Counties that exist within the Interstate 285 highway perimeter. In April 1979, the State of Georgia submitted the initial CO State implementation Plan (SIP) to EPA. The CO SIP projected that the Atlanta nonattainment area could not meet the CO standard by 1982. Under part D of title I of the 1977 Clean Air Act (CAA), Georgia requested and EPA approved

(January 24, 1980, 45 FR 5698) an extension of the CO attainment deadline until December 31, 1987. On April 1, 1982, a Reasonably Available Control Technology (RACT) level inspection and maintenance (I&M) program was implemented in the Atlanta nonattainment area as required for all major CO extension areas. A CO SIP revision was submitted by Georgia on July 30, 1982. EPA fully approved the SIP revision on November 10, 1982 (45 FR 51622). On March 21, 1989, the Department of Natural Resources of the State of Georgia requested that EPA redesignate the Atlanta CO nonattainment area to attainment.

Redesignation of a CO nonattainment area requires the most recent eight consecutive quarters of quality assured ambient air quality data showing no violations of the NAAQS. More than one exceedance of the CO standard (i.e., 9 parts per million (ppm) for an 8-hour average concentration, and 35 ppm for a 1-hour average concentration) constitutes a violation (40 CFR 50.8 (1989)). In addition to maintaining the CO standard, EPA's redesignation policy requires that the EPA-approved control strategy must be fully implemented. This requires that transportation control measures (TCMs) committed to in the SIP and a RACT level I&M program, where required, have been fully implemented.

Georgia's redesignation request is based on four years (1985 to 1988) ambient air data from an EPA-approved CO monitoring network. The monitoring sites and their Aerometric Information Retrieval System numbers are Midtown (13-121-0050), Peachtree Center (13-121-0051), Brookwood (13-121-0052) and DeKalb Tech (13-089-1002). The monitoring data indicate that a CO violation has not occurred since the end of 1985. The maximum and second highest CO readings for each year and station are summarized in Table I.

In addition to the monitoring data, the attainment demonstration from the State of Georgia included the implementation of the part D control strategy approved by EPA (February 3, 1983, 48 FR 5038). The SIP required a CO emission reduction of 44% from the 1980 base year emission level of 279,040 tons per year (tpy). These emission reductions were projected to be achieved from the Federal Motor Vehicle Control Program (FMVCP), an I&M program and various TCMs.

The FMVCP is a program that has been instituted nationwide by EPA to reduce emissions from vehicles. It has been very successful in reducing CO emissions due to the installation of

emission controls in new vehicles. The gradual replacement of older vehicles with newer, cleaner ones has resulted in significant reductions in CO emissions.

All major urban areas that needed an extension beyond 1982 to attain the CO standard were required to implement a vehicle I&M program as a part of this control strategy. The Georgia RACT level I&M program was approved by EPA on January 24, 1980 (45 FR 5698), and has been in operation since April 1, 1982, in the Atlanta nonattainment area. On April 1, 1985, Gwinnett County was added to the I&M program after meeting the requirements for participation in the program. The I&M program is achieving its designed emission reductions and the EPA requirements for a RACT level program.

Section 108 of the CAA lists TCMs that must be evaluated for their feasibility to be implemented as a part of the control strategy. The Georgia SIP contained commitments to implement those TCMs which were determined to be feasible. The 1982 CO SIP Reasonable Further Progress demonstration includes a two percent emission reduction from the 1980 base year emissions of 279,040 tpy which equates a 5580.8 tpy. Calculations by the Atlanta Regional Commission (ARC) indicate that 5920.7 tpy in annual CO emission reductions were achieved due to the implementation of the TCMs. (See Table II for a listing of TCMs used in determining this reduction).

On September 24, 1990 (55 FR 39019), after experiencing internal processing delays, EPA proposed to approve the redesignation request submitted by the State of Georgia. At that time, the public was invited to submit written comments by October 24, 1990, on the proposed action. No comments were received. Procedurally, the next step was to finalize and publish approval of the redesignation request. EPA did not have a chance to take such action before enactment of the Clean Air Act Amendments of 1990 (CAAA), which were signed into law on November 15, 1990. Public Law No. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

The Amendments added several new requirements for redesignations of nonattainment areas. (See Section 107(d)(3)(E), 42 U.S.C. 7407(d)(3)(E)). Most notably, the Amendments require a fully approved maintenance plan which meets the requirements of Section 175A of the CAAA.

As a general rule, an Agency must apply new law to pending actions. See *Bradley v. Richmond School Board*, 416 U.S. 696, 711, 94 S.Ct. 2006, 201 (1974). However, EPA believes that the new

redesignation provisions do not apply to this final action on the Atlanta redesignation request. In certain circumstances, statutory provisions which on their face appear to apply to a certain situation may be found to be inapplicable. In some instances, the common or obvious meaning of the words of a statutory provision would produce an absurd, irrational or unjust result. *Public Citizen v. United States Dept. of Justice*, 109 S.Ct. 2558, 2566-67 (1989); *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459, (1892). For example, the Supreme Court has found that if the literal interpretation of a statutory provision would produce an irrational or unjust result, the statute should be construed to avoid that result. See *Green v. Bock Laundry Mach. Co.*, 109 S. Cr. 1981, 1985 (1989); see also *Public Citizen*, 109 S.Ct. at 2566-67; *Church of the Holy Trinity*, 143 U.S. at 459. In such instances, the circumstances surrounding the enactment of the statute may indicate that Congress did not intend the statute to have its literal meaning. *Watt v. Alaska*, 451 U.S. 259, 266, 101 S.Ct. 1673, 1678, (1981).

Literally interpreting the redesignation provision of the CAAA to have broad application would produce an irrational and unjust result. The provision facially appears to apply to any area seeking redesignation to attainment. Congress clearly desired the CAAA to apply to redesignation requests that were new or just beginning the redesignation process. However, application of this strict rule to certain pending redesignation requests that had substantially completed the redesignation process under the pre-amended Act would not only be irrational, but also unjust.

It would be irrational to require both the State, which had completed all necessary action on its part, and EPA, which had substantially completed all necessary action, to repeat these steps under the new provisions of the amended Act. Since EPA had already proposed to approve the redesignation request, no comments were received, and no intervening circumstances had changed EPA's proposed decision to redesignate, the only action remaining was to publish the final notice of redesignation. It would be irrational to require the State and the Agency to repeat these steps under the new provisions when no controversy concerning the redesignation exists. In addition, application of this provision to the State would be unjust. Because the action was substantially complete and EPA was responsible for any delay in proposing and promulgating the redesignation, it would be unjust to

require Georgia to reinitiate the redesignation process by making a new and more complex submittal and to subject the Atlanta area to the new requirements for nonattainment areas during the period it takes to meet these new redesignation requirements.

There is no evidence that Congress intended such an irrational and unjust result. In fact, the only pertinent legislative history manifests an intent that this provision not be applied to the particular circumstances of this case. During the Senate debate, Senator Chafee, the ranking minority member of the Senate Committee on the Environment and Public Works, and a conferee, responded to remarks by Senator Nickles concerning pending redesignation requests, by stating: "In the case where there is no evidence of new violations, where a State has a request for [re]designation pending before EPA, and the Agency has proposed to approve this request, the Agency should proceed to complete its action using the existing criteria for review and approval of such requests." 136 Cong. Rec. S17236 (daily ed. October 26, 1990).¹ Based on this evidence of Congressional intent, and the irrationality and injustice of applying the statutory provision in its literal sense, this provision should not be given the broad interpretation that it appears to require on its face.

In addition, although the provision facially appears to apply to the pending redesignation request, in actuality, the provision is ambiguous because it does not speak directly to the present circumstances. An agency may apply

pre-existing law to a pending action if the new law does not directly speak to the action being taken and if manifest injustice would result from application of the new law. *Bradley*, 416 U.S. at 711, 94 S.Ct. at 2016. *Contra Bowen v. Georgetown University Hosp.*, 488 U.S. 204 109 S. Ct. 468 (1988) (if the statute does not directly speak to the issue, then it is presumed that the pre-existing law applies).

Section 107(d)(1)(C), the designation provision in the amended Act, does not speak to the present situation. It provides that areas designated nonattainment before enactment of the amendments are designated nonattainment by operation of law; however, it does not address the case in which EPA proposed redesignation to attainment before enactment of the 1990 Amendments, has not received any adverse comments on the proposed action, and the final action is substantially the same as the proposed action. Furthermore, the legislative history quoted above indicates that at least some key members of Congress did not believe the new statute directly addressed this type of situation; indeed, Senators Chafee and Nickles believed the law was susceptible to an interpretation that would not subject this type of area to the new redesignation requirements.

Moreover, application of the new law would work a manifest injustice. The amended Act places new burdens on a State seeking redesignation of an area. Since the failure to redesignate the Atlanta CO nonattainment area was due to EPA's unreasonable delay in proposing redesignation, and no comments were received on EPA's proposed approval of the redesignation, it is unjust to subject the Atlanta area to these new requirements. If action had been taken promptly, the redesignation would have been finalized before enactment of the CAAA. The fact that

no comments were received during the comment period indicates that the action is not controversial. In addition, the Agency has found no basis for changing its proposed approval of the redesignation request, and now submits a substantially similar final action.

Final Action

On the basis of four years of air quality data showing no violations of the NAAQS for CO and a fully implemented EPA-approved control strategy, EPA is today approving the redesignation of the Atlanta CO nonattainment area to attainment.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Today's action makes final the action proposed at 55 FR 39019. As noted elsewhere in this notice, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the procedures published in the *Federal Register* on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 until April 1991.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

TABLE I

	1985		1986		1987		1988	
	Max	2nd	Max	2nd	Max	2nd	Max	2nd
1-Hour Average (ppm):								
Midtown.....	7.5	7.5	9.7	8.2	8.8	8.5	10.0	8.8
Ptree Center.....	18.9	17.1	17.8	12.7	11.3	9.5	19.5	17.5
Brookwood.....	14.4	13.0	15.9	11.9	11.8	11.7	11.3	10.4
Dekalb Tech.....	7.5	7.0	10.2	9.7	9.0	8.5	9.8	9.0
8-Hour Average (ppm):								
Midtown.....	5.6	5.5	5.8	5.5	6.7	6.2	6.3	5.9
Ptree Center.....	10.3	9.4	8.9	8.2	6.3	6.0	9.2	8.0
Brookwood.....	6.1	6.0	7.0	6.3	6.4	6.0	6.0	5.6
Dekalb Tech.....	6.1	5.5	6.0	5.9	7.2	5.9	5.7	5.8
Data Recovery:								
Midtown.....	97.4		96.9		93.1		94.0	

¹ Although the legislative history should not be something which would normally override the literal language of a statute, in cases of "unintended irrationality or injustice", the legislative history may overcome the strict textual reading of the statute. See *Green v. Bock Laundry Mach. Co.*, 109 S.Ct. at 1994; *Public Citizen*, 109 S.Ct. at 2567-73.

Ptree Center.....	95.0	91.4	81.7	98.5
Brookwood.....	89.9	88.2	93.3	97.5
Dekalb Tech.....	96.1	95.4	99.0	98.3

TABLE II

TCM	Reduction (tons/year)
Expanded Transit.....	1453.1
Express Transit to Park/Ride Lots.....	155.1
Informal Park/Ride Lots.....	1233.8
Improved Traffic Flow.....	1750.9
Pedestrian Paths, Bridges.....	134.0
Expand I & M Program.....	454.8
Fleet Vehicle Idling/Tune-up.....	739.0
Total.....	5920.7

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 10, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 81 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart C—Section 107 Attainment Status Designations

2. Section 81.311 is amended by revising the attainment status designation table titled "Georgia—CO" to read as follows:

§ 81.311 Georgia.

GEORGIA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Statewide.....		X

[FR Doc. 91-18616 Filed 8-5-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3981-1]

Designation of Areas for Air Quality Planning Purposes; Texas; Revised Geographical Designation of Certain Air Quality Control Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the revision of geographical designation of Air Quality Control Regions (AQCRs) in the State of Texas. On April 3, 1989, under section 107(e)(1) of the Clean Air Act and 40 CFR 81.11, the Governor of Texas requested that EPA approve the reconfiguration of five AQCRs in Texas. The change is requested in the interest of more efficient Air quality management by the Texas Air Control Board (TACB).

DATES: This action will be effective October 7, 1991 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Written comments on this action should be addressed to Thomas H. Diggs, Chief, Planning Section, Air Programs Branch, Region 6, U.S. Environmental Protection Agency at the address given below for the Region 6 EPA office. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,
Region 6, Planning Section (6T-AP),
1445 Ross Avenue, Dallas, Texas
75202-2733.

Texas Air Control Board, 12124 Park 35
Circle, Austin, Texas 78753.

U.S. Environmental Protection Agency,
Public Information Reference Unit, 401
M Street, SW., Washington, DC
20460.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours in advance.

FOR FURTHER INFORMATION CONTACT:
John Crocker or Barbara Durso at (214)

655-7214 or FTS 255-7214. Please reference Docket File Number TX 6-1-5219.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act as amended, the Administrator of EPA designated twelve Air Quality Control Regions (AQCRs) located partly or entirely in Texas. Today's notice concerns the following five AQCRs as described at 40 CFR part 81:

Sec.

81.38 Metropolitan Houston-Galveston
Intrastate AQCR.

81.53 Southern Louisiana-Southeast Texas
Interstate AQCR.

81.132 Abilene-Wichita Falls Intrastate
AQCR.

81.134 Austin-Waco Intrastate AQCR.

81.137 Midland-Odessa-San Angelo
Intrastate AQCR.

In a letter dated April 3, 1989, the Governor of Texas requested the EPA's approval of the reassignment of six Texas counties from their present AQCRs to adjacent AQCRs as described below:

1. Coke, Concho, Menard, and McCulloch Counties from Midland-Odessa-San Angelo Intrastate AQCR to Abilene-Wichita Falls Intrastate AQCR;
2. San Saba County from Midland-Odessa-San Angelo intrastate AQCR to Austin-Waco Intrastate AQCR; and
3. Walker County from Metropolitan Houston-Galveston Intrastate AQCR to Southern Louisiana-Southeast Texas Interstate AQCR.

The Governor states that the transfers are desirable, because access to these particular counties is more convenient for the staff of the reassigned regional TACB offices than the staff of the presently assigned regional TACB offices. The new AQCR configurations allow TACB to better manage air quality resources from their regional offices.

To approve these reconfigurations of the AQCRs, the State must meet the requirements of:

(1) Section 107(e)(1)—the purpose of a redesignation must be for the purpose of efficient and effective air quality management.

(2) 40 CFR 81.11—allows for revisions to AQCRs if they protect the public health and welfare; and

(3) Section 107(e)(2)—allows for redesignation of a region that may affect another State, with permission of the Administrator, and the Governor of the

neighboring State if it will significantly affect the neighboring State.

According to the State, the new regional boundaries will be more convenient for regional TACB staff, which will lead to more efficient management. Thus, if the operation of a TACB regional office is more efficient, it will aid in protecting the public health and welfare.

All of the affected AQCRs, or the pertinent parts where the affected counties are or will be located, are presently designated as attainment for the national ambient air quality standards (NAAQS). At 40 CFR 81.344, these areas are rated "better than national standard," or "cannot be classified or better than national standard." Reassignment of the counties from one AQCR to another should not cause significant impact on the air quality of any of the counties involved.

The transfer of Walker County into an interstate region does not need the permission of the Governor of Louisiana, because it is not expected to have a significant effect on the State of Louisiana. Specifically, EPA finds that transferring Walker County into the Southern Louisiana-Southeast Texas Interstate AQCR will not have a significant effect on Louisiana because the County is presently in attainment for all NAAQS, and it is over 120 km (75 mi) from the Louisiana border.

Final Action

With this notice, EPA is approving a revision to 40 CFR Part 81 Subpart B concerning designation of AQCRs. The request changes the geographic boundaries of five AQCRs. The reconfigurations meet the statutory requirements of section 107(e) (1) and (2) of the Clean Air Act as amended and the regulatory requirements of 40 CFR 81.11.

The public should be advised that this action will be effective October 7, 1991. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn before the effective date. A subsequent notice will begin a new rulemaking action by announcing a proposal of the action and establishing a comment period.

The Agency has reviewed this request for conformance with the Clean Air Act as amended November 15, 1990, and it finds that the State's request conforms with those requirements regardless of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. 605(b) the Administrator has certified that redesignations do not have a significant economic impact on a substantial

number of small entities. (See 46 FR 8709.)

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 1991. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed. Furthermore, filing such a petition shall not postpone the effectiveness of this rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air Pollution control, National parks, Wilderness areas.

Dated: July 25, 1991.

Allyn M. Davis,
Acting Regional Administrator.

40 CFR part 81, subpart B, is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart B—Designation of Air Quality Control Regions

2. Section 81.38 is amended by revising the entry for Texas to read as follows:

§ 81.38 Metropolitan Houston-Galveston Intrastate Air Quality Control Region.

In the State of Texas: Austin County, Brazoria County, Chambers County, Colorado County, Fort Bend County, Galveston County, Harris County, Liberty County, Matagorda County, Montgomery County, Waller County, Wharton County.

3. Section 81.53 is amended by revising the entry for Texas to read as follows:

§ 81.53 Southern Louisiana-Southeast Texas Interstate Air Quality Control Region.

In the State of Texas: Angelina County, Hardin County, Houston

County, Jasper County, Jefferson County, Nacogdoches County, Newton County, Orange County, Polk County, Sabine County, San Augustine County, San Jacinto County, Shelby County, Trinity County, Tyler County, Walker County.

4. Section 81.132 is amended by revising the entry for Texas to read as follows:

§ 81.132 Abilene-Wichita Falls Intrastate Air Quality Control Region.

In the State of Texas: Archer County, Baylor County, Brown County, Callahan County, Childress County, Clay County, Coke County, Coleman County, Comanche County, Concho County, Cottle County, Eastland County, Fisher County, Foard County, Hardeman County, Haskell County, Jack County, Jones County, Kent County, Knox County, McCulloch County, Menard County, Mitchell County, Montague County, Nolan County, Runnels County, Scurry County, Shackelford County, Stephens County, Stonewall County, Taylor County, Throckmorton County, Wichita County, Wilbarger County, Young County.

5. Section 81.134 is amended by revising the entry for Texas to read as follows:

§ 81.134 Austin-Waco Intrastate Air Quality Control Region.

In the State of Texas: Bastrop County, Bell County, Blanco County, Bosque County, Brazos County, Burleson County, Burnet County, Caldwell County, Coryell County, Falls County, Fayette County, Freestone County, Grimes County, Hamilton County, Hays County, Hill County, Lampasas County, Lee County, Leon County, Limestone County, Llano County, McLennan County, Madison County, Milam County, Robertson County, San Saba County, Travis County, Washington County, Williamson County.

6. Section 81.137 is amended by revising the entry for Texas to read as follows:

§ 81.137 Midland-Odessa-San Angelo Intrastate Air Quality Control Region.

In the State of Texas: Andrews County, Borden County, Crane County, Crockett County, Dawson County, Ector County, Gaines County, Glasscock County, Howard County, Irion County, Loving County, Martin County, Midland County, Pecos County, Reagan County, Reeves County, Schleicher County, Sterling County, Sutton County, Terrell

County, Tom Green County, Upton County, Ward County, Winkler County.

[FR Doc. 91-18617 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3980-91]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Arizona's application and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arizona's hazardous waste program revisions. Arizona's application for program revision is available for public review and comment.

DATES: Final authorization for Arizona shall be effective October 7, 1991 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Arizona's program revision application must be received by the close of business September 5, 1991.

ADDRESSES: Copies of Arizona's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, Central Office, Office of Waste Programs, Waste Assessment Section, 2005 N. Central Avenue, Phoenix, Arizona 85004 Phone: 602/257-2375.

Arizona Department of Environmental Quality, Northern Regional Office, 2501 North 4th Street, suite #14, Flagstaff, Arizona 86004 Phone: 602/779-0313 or 1-800/234-5677.

Arizona Department of Environmental Quality, Southern Regional Office, 4040 East 29th Street, Tucson, Arizona 85711 Phone: 602/828-5321 or 1-800/234-5677.

U.S. EPA Public Information Reference Unit (PM-211A), EPA Headquarters Library, 401 M Street SW., Washington, DC 20460 Phone: 202/382-5926.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, California 94105 Phone: 415/744-1510.

Written comments should be sent to April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, California 94105 Phone: 415-744-2026.

FOR FURTHER INFORMATION CONTACT: April Katsura at the above address and phone number.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266, 268, 124 and 270.

B. Arizona

Arizona initially received final authorization on November 20, 1985. On June 13, 1991, Arizona submitted a program revision application for additional program approvals. Today, Arizona is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Arizona's application, and has made an immediate final decision that Arizona's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Arizona. The public may submit written comments on EPA's immediate final decision up until September 5, 1991. Copies of Arizona's application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Approval of Arizona's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate

final decision takes effect or reverses the decision.

Arizona is applying for authorization for the following Federal hazardous waste regulations:

Federal requirement	State authority
Interim Status Standards—Applicability (49 FR 52718, November 22, 1983).	Arizona Revised Statute (ARS) 42-922(A) & (B); Arizona Administrative Code (AAC) R18-8-260(A) & (C) and 265(A); ARS 49-922(A) & (B); AAC R18-8-260(c) and 262(A); ARS 49-922(A) & (B); AAC R18-8-270(A).
National Uniform Manifest (49 FR 10490, March 20, 1984).	ARS 49-922(A) & (B); AAC R18-8-261(A).
Permit Rules: Settlement Agreement (49 FR 17716, April 24, 1984).	ARS 49-922(A) & (B); AAC R18-8-261(A).
Time Stabilized Pickle Liquor Sludge (49 FR 23284, June 5, 1984).	ARS 49-922(A) & (B); AAC R18-8-261(A).
Exclusion of Household Waste (49 FR 44978, November 13, 1984).	ARS 49-922(A) & (B); AAC R18-8-261(A).
Interim Status Standards—Applicability (49 FR 46095, November 21, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(A) & (C) and 265(A).
Corrections to Test Methods Manual (49 FR 47390, December 4, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(C).
Definition of Solid Waste (40 FR 614, January 4, 1985, as amended on April 11, 1985 at 50 FR 14216 and August 20, 1985, at 50 FR 33541).	ARC 49-921(5) and 922(A); AAC R18-8-260(C), 261(A) & (F), 264(A) & (B), 265(A) and 266(A).
Interim Status Standards for Treatment, Storage or Disposal Facilities (50 FR 16044, April 23, 1985).	ARS 49-922(A) & (B); AAC R18-8-265(A).
Financial Responsibility: Settlement Agreement (51 FR 16422, May 2, 1986).	ARS 49-922(A) & (B); AAC R18-8-260(A) & (C), 264(A), 265(A) & (I) and 270(A).
Listing of Spent Pickle Liquor (K062) (51 FR 19320, May 28, 1986, as amended on September 22, 1986, at 51 FR 33612).	ARS 49-922(A) & (B); AAC R18-8-261(A).

Arizona agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Arizona agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly,

Arizona is granted final authorization to operate its hazardous waste program as revised.

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this

authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3008 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 25, 1991.

Jeffrey Zelikson,
Acting Regional Administrator.
[FR Doc. 91-18509 Filed 8-5-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3981-6]

Utah; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule, correction.

On May 23, 1991 (56 FR 23648), EPA published the Immediate Final Rule for authorization of portions of the Federal RCRA program in Utah. EPA inadvertently omitted the following Federal citations from Table I. This notice corrects these errors. These corrections do not impact the authorization which became effective July 22, 1991.

TABLE 1.—PROVISIONS

Federal Register reference	State equivalent ¹
1. TDI, DNT, and TDA wastes, 50 FR 42936-42943 10/23/85	R450-2-1.8, R450-2-1.9, R450-50-1J, R450-50-1K, R450-50-1L.
2. Burning of waste fuel and used oil fuel in boilers and industrial furnaces, 50 FR 49164-49211, 11/29/85 as amended, 51 FR 41900-41904, 11/19/86, and on 4/13/87 52 FR 118119-11822	R450-1-1.2, R450-2-1.4, R450-2-1.5, R450-8-15.1, R450-8-15.1, R450-7-22.1, R450-7-29, R450-7-30.
3. Listing of spent solvents, 50 FR 53315-53320, 12/31/85 as amended 1/21/86, at 51 FR 2702	R450-2-1.8.
4. Listing of EDB wastes, 51 FR 5327-5331, 2/13/86	R450-2-1.8, R450-50-1J, R450-50-1K.
5. Listing of four spent solvents, 51 FR 6537-6542, 2/24/86	R450-2-1.8, R450-2-1.9, R450-50-1J, R450-50-1L.
6. Generators of 100-1,000 kg hazardous waste, 51 FR 10146-10176, 3/24/86	R450-1, R450-2-1.4, R450-4-2, R450-5-9, R450-5-11, R450-4-3, R450-3-3.2
7. Financial responsibility requirements: Settlement agreement, 51 FR 16442, 5/2/86	R450-1, R450-8-7, R450-8-8, R450-7-14, R450-7-15, R450-3-3.2, R450-3-9, R450-3-20.
8. Codification rule, technical correction, 51 FR 19176, 5/28/86	R450-7-21.
9. Listing of spent pickle liquor (K062), 51 FR 19320-19322, 5/26/86	R450-2-1.8.
10. Liability coverage—corporate guarantee, 51 FR 25350-25356, 7/11/86	R450-8-8, R450-7-15.
11. Standards for hazardous waste storage and treatment tank systems, 51 FR 25422-25486, 7/14/86 as amended on 8/15/86, 51 FR 29430-29431	R450-1, R450-5-9, R450-8-2.6, R450-8-5.3, R450-8-7, R450-8-8, R450-8-10, R450-7-9.4, R450-7-9.6, R450-7-12.4, R450-7-15, R450-7-17, R450-3-3.2, R450-3.20.
12. Corrections to listing of commercial chemical products and appendix VIII constituents, 51 FR 28296-28310, 8/6/86	R450-2-1.9, R450-50-1L.
13. Biennial report correction, 51 FR 28556, 8/8/86	R450-8-5.6, R450-7-12.6.
14. Exports of hazardous waste, 51 FR 28664, 8/8/86	R450-2-1.4, R450-2-1.5, R450-5-5, R450-5-12, R450-5-13, R450-5-10.1, R450-50-1B, R450-4-3.
15. Standards for generators—waste minimization certifications, 51 FR 35190, 10/1/86	R450-50-1B.
16. Listing of EBDC, 51 FR 37725, 10/24/86	R450-2-1.8, R450-50-1J, R450-50-1K.
17. Land disposal restrictions, 51 FR 40572-40584, 11/7/86 as amended 6/4/87 at 52 FR 21010-21018	R450-2.1, R450-5-1, R450-6-1.4, R450-8-1, R450-8-2.4, R450-8-5.3, R450-7-8.1, R450-7-9-4, R450-13, R450-12.4, R450-50-1P, 1Q, R450-3.3, R450-3-13, R450-3-8.
18. Revised manual SW-846, 51 FR 8072-8073, 3/16/87	R450-2-1.7, R450-3-1.2.
19. Closure/post closure care for interim status surface impoundments, FR 8704, 3/19/87	R450-7-18.6.
20. Definition of solid waste: Technical corrections, 52 FR 21306, 6/5/87	R450-2-1.9, R450-7-28.
21. Amendments to part B information requirements for disposal facilities, 52 FR 23447-23450, 6/22/87, as amended 9/9/87 at 52 FR 33936	R450-3-3.2.
22. Identification and listing of hazardous waste, 52 FR 26012, 7/10/87	R450-2-1.9.
23. Liability requirements for hazardous waste facilities corporate guarantee, 52 FR 44314, 11/18/87	R450-8-8, R450-7-15.

¹ Rules referenced are to the Utah Solid and Hazardous Waste Rules. State Authorities: UCA 26-14-2, enacted 1981, amended 1987 and 1988, effective 7/1/87 and 4/25/88. UCA 26-14-5, enacted 1981, amended 1988, effective 4/25/88 and 9/20/88. UCA 26-14-6, enacted 1981, amended 1986, 1987, 1988, effective 7/1/87, 4/25/88, and 9/20/88.

FOR FURTHER INFORMATION CONTACT:

Marcella M. DeVargas (8HWM-RM), RCRA Program Support Section, RCRA Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202-2405. Phone: 303/293-1670.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 19, 1991.

James J. Scherer,

Regional Administrator.

[FR Doc. 91-18618 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 28**

[Docket No. 47666]

RIN 2105-AA29

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Transportation Conducted Programs

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by Federal Executive agencies, including the Department of Transportation, and is issued under the authority of that Act. 49 CFR part 27 carries out section 504 in the Department's financial assistance programs. This regulation sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: This rule is effective September 5, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Office of Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, room 10424, 400 7th Street SW., Washington, DC 20590. 202/366-9306. Persons with impaired hearing may contact Mr. Ashby by using TDD 202/755-7687. Taped copies are available on request for the use of persons with visual impairments.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide for the

enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Transportation. Section 504 states, in pertinent part, that—

No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794 (1978 amendment italicized).)

The substantive nondiscrimination obligations of the Department, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR part 41 (Department of Justice section 504 coordination regulation for federally assisted programs) and 49 CFR part 27 (Department of Transportation section 504 rule for financial assistance programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (DC Cir. 1981) (*APTA*); see also *Rhode Island Handicapped Action Committee v.*

Rhode Island Public Transit Authority, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing § 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted program regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Department believes that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298). This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and therefore, a regulatory impact analysis has not been prepared. However, it is a significant rule under the Department of Transportation's Regulatory Policies and Procedures. A regulatory evaluation is not needed under the Department's

procedures. The rule imposes no requirements or costs on parties outside the Department. The primary cost on DOT that this rule would impose is the obligation to make appropriate modifications for the handicaps of employees and others. The rule itself prevents undue burdens resulting from this obligation. The regulatory review called for by the rule will impose only minimal administrative costs.

This regulation does not have any impact on small entities since it governs only the conducted programs of DOT. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 601-612), we certify that the proposal would not have a significant economic impact on a substantial number of small entities.

Response to Comments

The Department received only two comments on the notice of proposed rulemaking (NPRM) for this rule (55 FR 4633; February 9, 1990). The comments were from the Paralyzed Veterans of America (PVA) and the National Association of the Deaf Legal Defense Fund (NAD).

NAD and PVA both object to references to safety in various provisions of the regulation, saying that this emphasis on safety "is unnecessary and perpetuates the myth that persons with disabilities present a threat to themselves and others and are incapable of recognizing that danger." The Department believes that this concern is misplaced.

The Department of Transportation is a safety agency. Many of its regulatory programs are designed to ensure that trains, planes, ships, automobiles, trucks, buses, etc., and the people who operate them, provide safe transportation for the traveling public. To argue that the Department should avoid considering safety in any regulation having potential effects on the lives of the traveling public is to ignore a fundamental DOT mission. The ability to perform safely is self-evidently among the essential eligibility requirements for any position involving transportation functions regulated by the Department, and no individual, with or without a disability, is a qualified individual with respect to such functions if he or she cannot perform them safely. Paying due attention to safety does not, in our view, perpetuate any myths about people with disabilities or any other group.

The two comments discuss this concern about referring to safety primarily in the context of the definition of "qualified individual with handicaps." NAD expresses particular concern about a reference in the

preamble to the NPRM to DOT safety rules establishing physical qualifications for transportation employees. The Department would view meeting these standards as among "essential eligibility requirements" for the positions involved. As explained in NAD's comment and voluminous attachments to it, NAD contends that some DOT physical qualification standards (e.g., requirements of the Federal Motor Carrier Safety Regulations for hearing acuity for interstate truck drivers) are contrary to section 504 because they establish an irrefutable presumption of unfitness for some individuals, without the opportunity for a case-by-case evaluation of the individuals' ability to perform job functions safely.

In the Department's view, it is not appropriate to attempt to resolve issues about the content of DOT physical qualification standards in this rulemaking, which is intended to establish the basic regulatory framework for the implementation of section 504 in DOT-conducted programs. The regulation provides a mechanism for addressing issues of the kind NAD raises about the content of the physical qualification standards. Under section 28.110, the Department's self-evaluation will include consideration of the consistency of its safety regulations with the standards of section 504. If, as a result of that self-evaluation, it is deemed necessary to alter physical qualification standards, then appropriate changes would be made.

Both comments asked for the inclusion of additional items in the definition of "auxiliary aids," and PVA suggested changing the name of the term to "aids for reasonable accommodation." The matters listed in the definition are intended to be examples, and not an exhaustive list. With respect to attendant services, which PVA requested be included, the Department believes that these are basically personal services which it is not appropriate to require in the rule. "Auxiliary aids" is a common, well-understood term; the Department is not persuaded that there would be anything to gain from changing it. Certainly the term cannot connote something that is discretionary in the context of a rule that requires auxiliary aids to be provided.

PVA generally approved the definition of facility, and from it assumed that all rolling stock or other conveyances used in DOT-conducted programs would be accessible (e.g., lift-equipped). The Department agrees, in the sense that we would hold ourselves to standards articulated in the Americans with Disabilities Act (ADA) with respect to

the acquisition of accessible vehicles. This regulation, like the ADA, does not require retrofit of existing vehicles.

The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31), except that it reflects the amendment made by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336 (ADA), which provides that the term does not include an individual who is currently illegally using drugs, when the agency acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 28.131, which effectuates the substantive provisions of the ADA amendment.

Definitions are also added of two terms. The phrase "current illegal use of drugs" is used in § 28.131. Its meaning is discussed in the preamble for that section. The definition of the term "drug" is taken from section 512(b) of the ADA.

Finally, a new § 28.131 has been added. Section 28.131 effectuates section 512 of the Americans with Disabilities Act, which amended title V of the Rehabilitation Act to clarify its application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

As amended, the Act and the regulation distinguish between *illegal* use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Alcohol is not a controlled substance, so use of alcohol is not affected by § 28.131 (although alcoholics are individuals with disabilities, subject to the protections of the statute). Section 28.131 also does not affect use of controlled substances pursuant to a valid prescription, or other use that is authorized by the Controlled Substances Act or any other provisions of Federal law. It is the *use* of the substance, rather than the substance itself, that is illegal.

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the *illegal use* of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people

who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 28.103, which is based on the report of the Conference Committee on the ADA, H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990), is "illegal use of drugs that occurred recently through enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided under titles I, II, and III of the Rehabilitation Act on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 512 of the ADA that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure that an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully, is no longer engaged in the illegal use of drugs.

Paragraph 28.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in illegal use of drugs is not currently engaging in the illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other

procedures which would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

PVA suggested adding some elements to the self-evaluation requirement, including an assurance, a transition plan, a list of persons consulted, and modifications made for persons with vision and hearing impairments. PVA also felt that the self-evaluation file should be retained indefinitely, rather than for three years. The Department does not believe that additional paperwork would add much to the process. An assurance from DOT to DOT that DOT will make needed modifications seems superfluous, for example. DOT will modify the record retention provision to provide that the material will remain on file until all matters identified in the self-evaluation as needing modification have been modified.

PVA suggested that notice of the provisions of this rule should be made in recruitment materials and in accessible formats. The proposal required provision of this information to applicants; no regulatory change appears needed (the scope of this action would apply to prospective applicants as well). Likewise, information will be provided to the public in accessible formats, but no regulatory change is needed here to implement this policy.

PVA's next comment concerns a suggested addition to the general prohibitions against discrimination. It suggests language, parallel to that in 49 CFR part 27, the Department's financial assistance programs section 504 rule, prohibiting the provision of significant assistance to an agency, organization, or person that discriminates. The comment's example is of discrimination by another Federal agency that does not have to have a section 504 rule (e.g., the Federal Communications Commission) that somehow would be assisted by DOT. The Department does not believe that such an addition is needed. The part 27 language has obvious application in the financial assistance programs context, but not in the DOT-conducted programs context. The FCC example refers to too far-fetched and speculative a situation to warrant a regulatory provision.

With respect to new construction and alterations, PVA requested additional language referencing requirements under the Architectural Barriers Act (ABA). We agree that section 504 and

the ABA are different statutes, and that compliance with one does not necessarily fulfill all obligations under the other. This, however, is a section 504 regulation, and, to be complete, need only encompass requirements under section 504. The ABA is adequately implemented by other regulations.

With respect to communications, both PVA and NAD suggest that, in determining whether an accommodation would create an undue burden, the entire resources of the agency be taken into consideration (rather than the funds available to the specific program or activity). This is not always feasible. The Federal budget process allocates appropriations to specific agencies and offices within DOT. Funds allocated to the FAA for air traffic control are not available to the Coast Guard pay for a braille printer. Funds allocated to the Assistant Secretary for Policy and International Affairs for research and development are not available to the Office of General Counsel for use in hiring interpreters. When considering whether a burden is undue, the decisionmaker will consider all Departmental resources available for use in the funding and operation of the conducted program, but all of the Department's resources cannot be regarded as available for particular programs or activities.

PVA suggested several additions to the compliance procedures section of the rule. First, PVA suggested a regulatory provision for obtaining input from the Architectural and Transportation Barriers Compliance Board (ATBCB) to resolve problems concerning facilities accessibility. The Department will consult with the ATBCB for this purpose when needed, but a regulatory provision is not essential.

Second, PVA requested a judicial review mechanism. The establishment of judicial review mechanisms is a matter for Congress and the courts. The Department does not have the authority, through rulemaking, to either provide for or preclude judicial review.

Third, PVA asked for a provision to ensure that all other documents issued by the Department are superseded by the nondiscrimination regulations of this part. Upon publication of this part, the Department will take action to ensure that any inconsistent rules, directives, etc. are superseded, but a provision in this rule is not necessary for this purpose.

Fourth, PVA recommended that provisions be added to explicitly allow compensation and attorney fees in administrative proceedings brought by

persons to enforce the rule against the Department. These issues are statutory, and beyond the scope of this rulemaking. The Department of Justice addressed these concerns in the preamble to its final rule on this subject, and the Department relies on that discussion.

With respect to the same provision, NAD suggests that the regulation explicitly state that deaf individuals have the right to seek review of a denial of a waiver of requirements of the Federal Motor Carrier Safety Regulations (FMCSR). The DOT should also allow deaf individuals to petition for a waiver of the disqualifying condition pertaining to deafness, NAD contends.

The latter point goes to the substance of the disagreement NAD has with the content of some provisions of the FMCSR. DOT finds it inappropriate to resolve here whether the FMCSR should permit individual waiver of this other disqualifying conditions. Nevertheless, individuals with impaired hearing have the same right as all other individuals to submit a complaint under the compliance procedures for any action of the Department which they believe is inconsistent with this Part.

A new paragraph (b)(2) has been added to § 28.170 to deal with complaints alleging violations of section 504 with respect to requirements of any DOT qualification standards. In this new paragraph the Department has established a process for the review and disposition of complaints alleging that a DOT rule is facially inconsistent with section 504. In those instances when a complainant alleges, for example, that a physical qualification standard established by the department, or any modal administration of the Department, applicable to a regulated transportation industry unlawfully discriminates against people with disabilities, the Department refers such complaint to the appropriate office or modal administration for review as a request for a rulemaking change to amend or rescind the challenged standard or a request for an individual waiver.

The operating administration would consider the petition for rulemaking and inform the complainant, in writing, of its decision on the petition. If the complainant is dissatisfied with the decision, it can request reconsideration of the decision. In some operating administrations, there is a formal procedure established by regulation for reconsiderations (e.g. 49 CFR 389.35-37 for the Federal Highway Administration). In others (e.g. the Coast Guard) there is no formal procedure, but reconsideration is permitted on an ad

hoc basis. In any case, the operating administration will reconsider its decision on request of the complainant.

The Federal Highway Administration (FHWA), for example, has established minimum physical qualification standards for interstate drivers of commercial motor vehicles. These standards have been adopted in response to laws directing the agency to establish such requirements to ensure public safety. 49 U.S.C. 3102 and 49 U.S.C. app. 2505. Section 206 of the Motor Carrier Safety Act of 1984 provides, in part, that the agency is to adopt safety standards that shall ensure that "the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely * * *." 49 U.S.C. app. 2505 (a)(3). Complaints received by the Department that any of these standards unlawfully discriminate against people with disabilities who wish to drive commercial motor vehicles in interstate commerce are referred to the Administrator of the FHWA for handling as a request for a waiver or for review and possible amendment of the challenged of standard.

Section 206(f) of the MCSA authorizes the agency to "waive, in whole or in part, application of any regulation issued under (Section 206 with respect to any person or class of persons," if it is determined that such action "is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." Such requests for individual waivers are granted after notice and opportunity for comment has been provided and the FHWA has assured itself that such a waiver meets the standards established by statute. 49 U.S.C. app. 2505(f).

In considering requests for individual waivers or when reviewing a standard for possible amendment, the FHWA is mindful that its driver qualification standards must be consistent with the principles of the Rehabilitation Act. Moreover, recent Congressional action emphasizes the need to ensure that anti-discrimination principles are incorporated in any review of agency rules.

Accordingly, the FHWA intends to review all of its driver physical qualification standards to ensure that they continue to be based on sound medical, scientific, and technological grounds and that they are consistent with the standards of section 504. The first steps in this review have been taken. See, e.g., 55 FR 41,028 (Oct. 5, 1990) (notice of proposed rulemaking proposing to eliminate a blanket prohibition against insulin-using diabetics driving in interstate

commerce). Several recent specific requests for review of these standards are being considered by the FHWA in its current regulatory review effort.

The Department does not believe that this review process for interstate driver qualification requirements adds any burden to complainants beyond those imposed on any section 504 complainant. The Department believes that the FHWA's current comprehensive review of its driver qualification requirements will ensure an orderly and thorough review of these standards taking into full account both safety and anti-discrimination factors. In this latter regard, the Department notes that the FHWA, as part of its normal regulations review and development process, involves staff representing a number of disciplines, as well as with the Office of the Secretary.

Moreover, as part of this review the FHWA will not require individuals to produce information or data which may not be readily available to them. Rather, it is the agency's intent to develop the required information through its own resources, supplemented through public notice and opportunity for comment.

The Department believes that this approach will facilitate its review of all of its standards and will enable the Department to ensure itself that standards which it has adopted promote public safety while not unduly restricting employment opportunities for those with disabilities.

Because, with the one exception discussed with respect to the record retention provision of the self-evaluation section, the NPRM is being adopted without change, the Department refers interested persons to the preamble of the NPRM (55 FR 4633-4640; Feb. 9, 1990) for further information concerning the provisions of the individual sections of this rule.

List of Subjects in 49 CFR Part 28

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Issued this 30th day of July 1991, at Washington, DC.

Samuel K. Skinner,
Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR Subtitle A is amended by adding a new part 28 to read as follows:

**PART 28—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY THE
DEPARTMENT OF TRANSPORTATION**

Sec.

- 28.101 Purpose.
- 28.102 Application.
- 28.103 Definitions.
- 28.104–28.109 [Reserved]
- 28.110 Self-evaluation.
- 28.111 Notice.
- 28.112–28.129 [Reserved]
- 28.130 General prohibition against discrimination.
- 28.131 Illegal use of drugs.
- 28.132–28.139 [Reserved]
- 28.140 Employment.
- 28.141–28.148 [Reserved]
- 28.149 Program accessibility: Discrimination prohibited.
- 28.150 Program accessibility: Existing facilities.
- 28.151 Program accessibility: New construction and alterations.
- 28.152–28.159 [Reserved]
- 28.160 Communications.
- 28.161–28.169 [Reserved]
- 28.170 Compliance procedures.
- 28.171–28.999 [Reserved]

Authority: 29 U.S.C. 794

§ 28.101 Purpose.

The purpose of this part is to carry out section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies, including this Department, or the United States Postal Service. 49 CFR part 27 implements section 504 in the Department's financial assistance programs.

§ 28.102 Application.

This part applies to all programs or activities conducted by the Department except for programs and activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 28.103 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials,

audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory actions in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary and all operating administrations.

Departmental Element (or "DOT element") means any one of the following organizations within the Department.

- (a) Office of the Secretary (OST).
- (b) United States Coast Guard (USCG).
- (c) Federal Aviation Administration (FAA).
- (d) Federal Highway Administration (FHWA).
- (e) Federal Railroad Administration (FRA).
- (f) National Highway Traffic Safety Administration (NHTSA).
- (g) Urban Mass Transportation Administration (UMTA).
- (h) Research and Special Programs Administration (RSPA).
- (i) Maritime Administration (MARAD).
- (j) St. Lawrence Seaway Development Corporation (SLSDC).

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C.

812) The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase: (1) "Physical or mental impairment"—

(i) Includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

Neurological; muscular; skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and

(iii) Includes, but is not limited to, such diseases or conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Department as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to education services provided by the U.S. Merchant Marine Academy or the U.S. Coast Guard Academy, an individual with handicaps who meets the essential eligibility requirements for participation in and receipt of such services, including the physical standards applicable to the U.S. Naval Reserve or the U.S. Coast Guard.

(2) With respect to any other Department program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature. The essential eligibility requirements include the ability to participate without endangering the safety of the individual or others.

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 28.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28), and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100-630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 28.104-109 [Reserved]

§ 29.110 Self-evaluation.

(a) The Department shall, by one year of the effective date of this part, evaluate its current policies and practices, and effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is

required, the Department shall proceed to make the necessary modifications.

(b) The Department shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, and organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Department shall, until at least three years following completion of the evaluation required under paragraph (a) of this section, or until such time as all modifications identified by the self-evaluation to be necessary to comply with section 504 have been completed, whichever occurs later, maintain on file and make available for public inspection—

(1) a description of areas examined, regulations and nonregulatory criteria reviewed, and any problems identified; and

(2) a description of any modifications made.

§ 28.111 Notice.

The Department shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such manner as the Department finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 28.112-28.129 [Reserved]

§ 28.130 General prohibition against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangement, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or

service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Department, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or

activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part. The Department may limit the programs or activities of a licensee or certificate holder, who is a qualified individual with handicaps, to the extent necessary to ensure the safety of that person or the safety of others.

(c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 28.131 Illegal use of drugs.

(a) General. (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) Health and rehabilitation services. The agency shall not deny health services or services provided under titles I, II, and III of the Rehabilitation Act to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) Drug testing. (1) This part does not prohibit the agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the

conduct of testing for the illegal use of drugs.

§§ 28.132–28.139 [Reserved]

§ 28.140 Employment.

(a) No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department.

(b) The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities. The provisions of this section do not apply to military personnel of the U.S. Coast Guard.

§§ 28.141–28.148 [Reserved]

§ 28.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 28.150, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 28.150 Program accessibility: Existing facilities.

(a) General. The Department shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) [Reserved]

(3) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the DOT element has the burden of proving that compliance with § 28.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or

activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible. Provided that, where major restructuring of fixed facilities to accommodate technological changes is planned to occur within five years from the effective date of this part, changes needed to comply with this section are not required to be made until the planned restructuring takes place. However, alternative means for participation by individuals with handicaps in DOT programs and activities in the most integrated setting possible during this interim waiting period shall be available.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program

accessibility, the Department shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 28.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600-607, apply to buildings covered by this section, except for military facilities of the Coast Guard, which are covered by 32 CFR part 56.

§ 28.152-28.159 [Reserved]

§ 28.160 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the individual with handicaps.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs) or equally effective telecommunication systems, shall be used to communicate with persons with impaired hearing.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signs at each primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information as to the location of accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in an undue financial and administrative burden, the DOT element has the burden of proving that compliance with § 28.160 would result in such alteration or burden. The decision that compliance would result in such alteration or burden must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 28.161-28.169 [Reserved]

§ 28.170 Compliance Procedures.

(a) Except as provided in paragraph (b) of this section, paragraphs (c)-(k) of this section apply to all allegations of discrimination on the basis of handicap

in programs of activities conducted by the Department;

(b)(1) The Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) The Department shall process complaints alleging violations of section 504 with respect to requirements of any Department safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, according to the procedures for a petition for an individual waiver or request for review of a standard for possible amendment or recession. The Departmental element shall inform the complainant, in writing, or the decision on the request. The complainant may request reconsideration by the Departmental element of the decision. The decision on the petition or request shall constitute the Department's final action in the matter.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Departmental Office of Civil Rights.

(d)(1) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(2) If the subject matter of a complete complaint concerns a decision by a Departmental element, under a safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, and the complainant has available within the Departmental element a formal review or appeal mechanism concerning that decision, the Department shall not take action on the complaint until the Departmental element's review or appeal process has been completed.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not

readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the letter required by § 28.170(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Policy and International Affairs. The appeal will not be heard by the same person who made the initial determination on the request. The decision on the appeal shall constitute the Department's final action in the matter.

(j) The Department shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Department determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 28.171–28.999 [Reserved]

[FR Doc. 91–18527 Filed 8–5–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 900793–1169]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; modification of permit criteria for Hawaii longline fishery moratorium.

SUMMARY: The Secretary of Commerce (Secretary) modifies an emergency rule now in effect that establishes a moratorium on issuing permits for the longline fishery for pelagic management unit species around Hawaii. Eligibility for limited entry permits is extended to lobster vessel owners who landed lobster in the Northwestern Hawaiian Islands (NWHI) in 1990. The purpose of this action is to correct an unanticipated discrepancy between the emergency and the long-term management plan. The modification is expected to relieve hardships on certain participants in the fishery.

EFFECTIVE DATE: The amendment to § 685.15(a)(1) is effective from 0000 hours local time August 1, 1991, to 2400 hours local time October 9, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514–6660, or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523–1368.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (56 FR 14866, April 12, 1991) temporarily amending the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) and its implementing regulations. The rule, which was implemented April 23, 1991, establishes a moratorium on additional entry into the Hawaii longline fishery to provide a period of stability and allow for development of an amendment to the FMP providing for long-term management.

Under the original moratorium, permits for the fishery were limited to persons who certified that they were: (1) Owners of vessels when those vessels made landings in Hawaii of longline-caught management unit species prior to December 5, 1990; (2) owners of vessels when those vessels engaged in transshipment(s) of longline-caught management unit species in the exclusive economic zone (EEZ) off Hawaii prior to December 5, 1990; (3) persons who made a substantial financial commitment or investment in gear prior to December 5, 1990, for a vessel owned by the person and located

in Hawaii prior to December 5, 1990, so that the vessel could participate in the fishery; or (4) persons who by June 21, 1990, had made a substantial financial commitment or investment in the construction of a new fishing vessel for participation in the fishery and intended contemporaneously with the investment to participate in the fishery. Permits were not transferable from one owner to another during the emergency period except in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery. The hardship determination was made by the Regional Director in consultation with the Western Pacific Fishery Management Council (Council). A permit holder could also replace the originally qualifying vessel with another vessel provided the Regional Director determined that the replacement vessel had comparable harvesting capacity.

At its meeting on May 16, 1991, the Council voted to request that the Secretary extend the moratorium for another 90-day period, and to institute immediately three modifications to the emergency rule: (1) To extend permit eligibility to persons who, prior to June 21, 1990, had made substantial financial commitment or investment in the refitting of a vessel for participation in the fishery in the EEZ surrounding Hawaii, and who can establish intent to participate in the fishery prior to or at the time of the commitment or investment; (2) to allow a permit holder to transfer a limited entry permit with the sale of the vessel one time during the emergency and proposed regular plan amendment period; and (3) to clarify application of the rule to vessels owned by corporations and partnerships. In a subsequent teleconference meeting on May 24, 1991, the Council agreed to request that permit eligibility be extended to persons who were owners of vessels that made landings of lobster from the NWHI in 1990. All of these provisions also would be included in the regular FMP amendment that would establish a long-term moratorium. The Council requested that the proposed modification be made effective as soon as possible.

The modifications agreed to at the May 15–16 meeting were implemented in a rule published in the *Federal Register* on June 24, 1991 (56 FR 28718). The modification proposed at this time extends permit eligibility to owners of lobster vessels that landed lobsters taken from the NWHI in 1990, as agreed to by the Council on May 24, 1991. Together, these changes will make the provisions of the emergency rule

identical to the provisions agreed on for the subsequent plan amendment. The Council would like this modification to be effective as soon as possible because of the financial hardships that would result if it were not implemented during the emergency period. Between five and eight lobster vessels that would qualify for limited entry permits under the proposed plan amendment moratorium are currently prohibited from participating in the longline fishery during the emergency period. Preventing these fishing vessels from fishing during the emergency period will cause hardships not intended by the Council because they also are prevented from landing lobsters under an emergency closure implemented to protect the lobster stocks from overfishing (56 FR 21961, May 13, 1991).

The Council is proceeding with an amendment to the FMP to extend the moratorium for an additional two and one-half years. The purpose of the moratorium is to allow the Council, MNFS, and industry to continue with data collection and analysis, evaluation of long-term management alternatives, including limited entry, and selection of a long-term management regime.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation, involving unintended hardship to certain vessels as explained above, and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule further modifies a rule that was originally implemented for 90

days under section 305(C)(2)(B) of the Magnuson Act and subsequently extended with modifications for an additional 90 days (June 24, 1991, 56 FR 28718).

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for a full 30 days, the effective date of these emergency regulations under sections 553(b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order and has been reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

NOAA prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Southwest Region (see "ADDRESSES").

The Assistant Administrator has determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii, and the state has concurred.

The rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued

without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 31, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.15, a new paragraph (a)(1)(iii) is added effective from 0000 hours local time August 1, 1991, to 2400 hours local time October 9, 1991, to read as follows:

§ 685.15 Limited Entry Permits

(a) * * *

(1) * * *

(iii) Was owner of the vessel, which had a permit issued under 50 CFR part 681, and which landed lobster taken from the Northwestern Hawaiian Islands during calendar year 1990; or

* * * * *

[FR Doc. 91-18568 Filed 8-1-91; 2:33 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 151

Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Aflatoxin Testing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the regulations under the United States Grain Standards Act (ACT), as amended (7 U.S.C. 71 *et seq.*), to include aflatoxin testing service requirements for export corn shipments. The Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 71 *et seq.*, as amended by title 20 Public Law No. 101-624, Sec. 2007) amends section 5 of the ACT to require that all corn exported from the United States be tested for aflatoxin, unless the contract for export stipulates that such testing is not required. In conjunction with implementing the required aflatoxin testing service for corn exported from the United States, FGIS will begin providing aflatoxin testing services on all grains, including corn, under the authority of the ACT. This action will increase the availability of official aflatoxin testing services to the grain industry and facilitate the implementation of the required export corn testing.

DATES: Comments must be submitted on or before September 5, 1991.

ADDRESSES: Comments must be submitted in writing to George Wollam, Federal Grain Inspection Service, USDA, room 0619 South Building, Box 96454, Washington, DC, 20090-6454; telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to George Wollam, TLX: 7607351, ANS:FGIS UC; telecopy users may respond to the automatic

telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at room 0619 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

George Wollam, address as above, telephone (202) 382-0231

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirement for small entities. Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection and recordkeeping requirements contained in this proposal are included under control number 0580-0013 now being reviewed by the Office of Management and Budget (OMB). Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, room 3201, NEOB, Washington, DC 20503.

Background

Aflatoxin is a naturally occurring mycotoxin produced by two types of mold, *Aspergillus flavus* and *Aspergillus parasiticus*. *A. flavus* is very common and widespread in nature and is more likely to occur when certain grains are

grown under stressful conditions such as drought. Aflatoxin occurs in soil, decaying vegetation, hay, and grains undergoing microbiological deterioration. It invades all types of organic substrates whenever and wherever the conditions are favorable for its growth.

Since 1977, FGIS has provided aflatoxin testing services under the authority of the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*), as amended. This service has been available through various FGIS field offices, the FGIS Commodity Testing Laboratory in Beltsville, Maryland, and government cooperators (a Federal or State agency having a cooperative agreement with FGIS).

The ACT authorizes the Administrator of FGIS to approve and provide official inspection service, upon request, using criteria other than numerical or special grade criteria for determining the kind, class, quality, or condition of grain, or other facts related to grain. FGIS refers to test services provided under this authority as "Official Criteria." This service is independent of the grade designation assigned under the Official U.S. Standards for Grain. Official criteria currently include several types of quality information, such as wheat protein, soybean oil and protein, moisture in all grains, and sunflower seed oil & admixture. Furthermore, these services are provided only upon the request of an interested person unless otherwise required by the standards or regulations under the ACT.

In conjunction with implementation of the required aflatoxin testing services for corn exported from the United States, FGIS will begin providing aflatoxin testing on all grains, including corn, as official criteria. This action will increase the availability of official aflatoxin test services to the grain industry and facilitate the implementation of the required export corn test.

Regulatory Revisions

The Grain Quality Incentives Act of 1990 (GQIA) amends section 5 of the ACT (7 U.S.C. 77) to require that any corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin

contamination. This requirement does not apply if export contract between the buyer and seller stipulates that aflatoxin testing is not required. Furthermore, the House Conference Report covering the QGIA (H.R. Conf. Rep. No. 916, 101st Cong., 2nd Sess. 595 (1990)) states,

*** buyer and seller may agree not to have corn tested for aflatoxin. However, if a buyer and seller desire an official USDA test and certification for aflatoxin, such test must be conducted by USDA. This does not preclude buyer and seller from utilizing private (unofficial) testing laboratories in lieu of USDA official testing.

FGIS proposes to implement the aflatoxin testing requirements of the QGIA by revising the regulations under the ACT to require official aflatoxin tests of corn exported from the United States unless: (1) The buyer and seller agree not to have the corn tested; or (2) the buyer and seller agree to have the corn tested by an entity other than FGIS or an agency authorized to perform official testing under the ACT. This requirement applies only to corn as defined in the official U.S. Standard for Corn (7 CFR part 810, subpart D). Furthermore, the aflatoxin testing requirement also applies to corn exported from the United States under the waiver provisions set forth under Section 800-18.

FGIS will cover the cost of providing aflatoxin test services by applying the applicable inspection fee(s) as set forth in § 800.71 of the regulations. For example, an inspection service fee of \$41.90 per hour per service representative would be charged under a noncontract, regular workday arrangement. This charge would cover all inspection activities, including grading and aflatoxin tests.

Proposed Action

FGIS proposes to revise §§ 800.15, 800.16, and 800.162. Specifically, FGIS proposes to revise language in § 800.15(b)(1) by including the exporter's responsibility for complying with corn aflatoxin testing requirements. Further, it is proposed to revise § 800.16(a) by including official aflatoxin test results as a certification requirement under the ACT.

FGIS proposes to revise § 800.162, Certificates of grade; special requirements, by the addition of a new paragraph (d), Aflatoxin Test for Corn, to indicate that each official certificate for shipments of export corn shall show aflatoxin test results, when applicable.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. It is proposed that § 800.15(b)(1) be revised as follows:

§ 800.15 Services.

(b) *Responsibilities for complying with the official inspection, aflatoxin testing, and weighing requirements—*(1) *Export grain.* Exporters are responsible for: (i) Complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the ACT and the regulations applicable to export grain and (ii) having all corn, as defined in Part 800-401, exported from the United States tested for aflatoxin contamination unless the buyer and seller agree not to have the corn tested by an entity other than FGIS.

3. It is proposed that § 800.16(a) be revised as follows:

§ 800.16 Certification requirements for export grain.

(a) *General.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain shall be issued according to § 800.162 for export grain loaded by an export elevator. Only these types of export certificates showing the official grade, official aflatoxin test results if required under the ACT and the regulation, and/or the Class X weight of the grain shall be considered to be in compliance with inspection and weighing requirements under the ACT for export grain.

4. It is proposed that § 800.162(d) be added as follows:

§ 800.162 Certification of Grade; special requirements.

(d) *Aflatoxin Test for Corn.* Official corn export certificates shall show, in addition to the requirements of paragraphs (a), (b), and (c) of this section, the official aflatoxin test results if required under § 800.15(b).

Dated: July 2, 1991.

D.R. Galliard,

Acting Administrator.

[FR Doc. 91-18364 Filed 8-5-91; 8:45 am]

BILLING CODE 3410-EN-M

FEDERAL HOUSING FINANCE BOARD 12 CFR Parts 922, 931 and 932

[No. 91-280.1]

Eligibility and Financial Disclosure Requirements for Directors of the Federal Home Loan Banks; and Federal Housing Finance Board, Board of Directors and Employee Responsibilities and Conduct

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rules.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to amend parts 931 and 932 of its interim rules governing the eligibility, financial disclosure and conflict of interest requirements for directors of the Federal Home Loan Banks ("FHLBanks"). The Finance Board also is issuing proposed regulations under part 922 implementing eligibility, financial disclosure and conflict of interest requirements for the appointive members of the Board of Directors of the Finance Board.

The proposed rule would revise the current eligibility, conflict of interest and financial disclosure requirements established by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. No. 101-73, 103 Stat. 183 August 9, 1989 ("FIRREA")) for appointive and elective directors of the FHLBanks. The proposed rules also would implement the eligibility and conflict of interest requirements for the appointive members of the Board of Directors of the Finance Board, which were established by FIRREA. They would apply to the Board of Directors financial interest prohibitions and financial disclosure requirements that are similar in many respects to those applicable to appointive directors of the FHLBanks. The proposed rules are intended to ensure that FHLBank directors and the Board of Directors of the Finance Board carry out their official responsibilities without conflicts of interest, or the appearance of conflicts of interest, that could affect adversely their ability to perform their duties, or the credibility or operations of the Finance Board or FHLBanks.

DATES: Comments must be in writing and received on or before September 5, 1991.

ADDRESSES: Comments should be mailed to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Attorney/Advisor,

Office of the General Counsel, (202) 408-2930, or Amy R. Maxwell, Director, Operations Division, District Bank Directorate, (202) 408-2882, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

FIRREA amended the Federal Home Loan Bank Act of 1932 ("Act") by establishing, in section 2A(a) of the Act, the Finance Board as the successor agency to the former Federal Home Loan Bank Board ("Bank Board") for the supervision and regulation of the twelve FHLBanks. 12 U.S.C. 1422a(a). Section 2A(b)(1) of the Act vests the management of the Finance Board in a Board of Directors consisting of the Secretary of Housing and Urban Development, and four directors appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1422a(b)(1). Section 2A(b)(2) sets forth eligibility requirements for appointment of the Finance Board directors, and limitations on conflicts of interest for such directors. 12 U.S.C. 1422a(b)(2). In addition, FIRREA amended section 7 of the Act, 12 U.S.C. 1427, by substantially changing the eligibility requirements for appointive and elective FHLBank directors.

In order to comply with FIRREA's new requirements for FHLBank directors, on January 16, 1990, the Finance Board amended the former Bank Board's director eligibility rules under 12 CFR parts 931 and 932 by issuing interim rules, effective January 5, 1990 (55 FR 1393). The Finance Board now proposes to further amend parts 931 and 932 in order to effect changes deemed desirable by the Finance Board as a result of public comments received and its experience under the interim rules. The Finance Board also proposes to issue new regulations under part 922 to implement the eligibility and conflict of interest provisions of FIRREA, and establish financial disclosure requirements, for the appointive members of the Board of Directors of the Finance Board. These provisions would parallel in many respects the definitions and requirements of parts 931 and 932 for appointive and elective FHLBank directors.

B. Analysis of Comments Received in Response to Request for Comment on Interim Rules

The Finance Board received eight comment letters in response to its request for comment on the interim rules. Comments were submitted by three FHLBanks, two financial trade

associations, and three savings institutions.

The comment letters are discussed below by subject matter addressed in the letters.

1. Appointive Director Eligibility

a. Qualifications

1. *Residency requirement.* Section 7(a) of the Act provides that "all (FHLBank directors) shall be citizens of the United States and bona fide residents of the district in which such [B]ank is located." 12 U.S.C. 1427(a). Section 932.18(a)(2) of the interim rules implements this statutory requirement by providing that each appointive director shall "[b]e a bona fide resident of the district served by the Bank for which he or she is a director."

One commenter noted that as president of an institution headquartered in Ohio, but residing ten minutes away in West Virginia, he is ineligible to serve as a director of the FHLBank of Cincinnati. The commenter suggested that the residency requirement be changed to include a "place of work" criterion as well in order to expand the source of qualified individuals to serve on the boards of the various FHLBanks. (A similar comment with respect to the residency requirement for elective directors was received from an Indiana institution located close to the Illinois border, whose officers reside nearby in Illinois, and therefore are ineligible to serve as elective directors of the FHLBank of Indianapolis.)

The Finance Board proposes to maintain the residency requirement in the regulations. The Finance Board believes that it does not have the flexibility to change the residency requirement because section 7(a) of the Act provides specifically that all FHLBank directors be bona fide residents of the district in which such FHLBank is located.

2. *Compliance with regulations and policies.* Section 932.18(a)(3) of the interim rules requires each appointive director to "[c]omply with all regulations and policies of the Board and the Bank, presently in effect or to be established by the Board or a Bank's directorate." One commenter questioned the import of requiring appointive directors to comply with the FHLBank's policies as established by its board, because the FHLBank's board lacks the authority to appoint, discipline or remove appointive directors. (The same comment also was made with respect to such compliance by elective FHLBank directors.)

The Finance Board proposes to keep this requirement in the regulations. It is appropriate that FHLBank directors be

required to comply with all regulations and policies, be they established by the Finance Board or their own FHLBank. Further, FHLBank directors could be subject to policies and procedures established by the board not directly relevant to their qualifications as a director (e.g., recordkeeping requirements and compensation for time and expenses incurred while serving as a director), and they should be required by these regulations to comply with such policies.

b. Prohibited Financial Interests

Section 7(a) of the Act states that no appointive director may, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implements this provision by providing that no appointive director may " * * * hold shares, or any other financial interest in any member of [any] Bank, non-diversified holding company, subsidiary or affiliate thereof * * *."

One comment letter opposed the statutory prohibition on financial interests, arguing that the most dedicated and supportive directors are those who have invested in the capital of member institutions because of their confidence in the FHLBank System. Thus, by prohibiting such persons with financial interests in members from serving on the FHLBank's board, FIRREA "waters down the qualifications of these directors." However, the Finance Board is charged with implementing the provisions of FIRREA, and does not have the discretion to ignore a financial interest prohibition mandated by statute.

Noting that FIRREA is silent as to the impact of the financial interest prohibition on existing appointive directors, another commenter stated that the Finance Board's regulations could have grandfathered such financial interests for the remainder of the director's term. The commenter stated that this would have given existing directors greater flexibility in deciding whether and when to divest their financial interests, thereby eliminating the possibility of substantial financial losses. Again, the Finance Board is constrained by the provisions of FIRREA, which prohibit such financial interests as of the effective date of the statute and do not provide for grandfathering of existing financial interests.

Section 931.20 of the interim rules defines a "financial interest" generally as the ownership or control of equity or debt interests. Interim § 931.18 defines

"control" to mean "[t]o own, hold with the power to vote, hold proxies representing, or otherwise hold the power to control ten percent or more of the voting shares or rights of a company." One commenter questioned the meaning of the phrase "otherwise hold the power to control," suggesting that the phrase be clarified or that examples of such control be set forth in the preamble. The Finance Board agrees that the meaning of this phrase may be unclear, and proposes to revise the definition to track more closely the definition of "control" in the Federal Reserve Board's ("FRB's") Regulation O and the Office of Thrift Supervision's ("OTS's") savings and loan holding company regulations. See 12 CFR 215.2(b), 583.7, respectively. Accordingly, the proposed regulations would revise the definition of "control" to mean "to own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company."

Under § 932.18(e) of the interim rules, financial interests of an appointive director's "spouse, child, or other dependents" are considered financial interests of the director. One comment letter stated that if the intent of this provision is to include only financial interests of minor children who are dependents of the director, the section is overbroad in failing to distinguish such financial interests from those of adult children who are no longer the legal responsibility of the director and are no longer claimed as dependents under other applicable laws. The proposed regulations would clarify this point by defining financial interests of an appointive director to include financial interests of the director's spouse, minor children, and any other individual related by blood, marriage or adoption residing in the director's household.

c. Mutual Funds

Section 932.18(f) of the interim rules provides that "(a)ppointive directors may have an indirect interest in securities or other financial interests of a member that arises through ownership of shares or other investment units of mutual funds." See H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess. (1989) ("FIRREA Conf. Rep."), at 425.

One comment letter suggested that the regulations distinguish a mutual fund from a holding company, and define a "diversified" mutual fund referred to in the FIRREA Conference Report. See *id.* The Finance Board proposes to define a diversified mutual fund in the proposed regulations by reference to the definitions of such company as set forth

in section 5 (a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-5 (a), (b)(1).

d. Effect of Ineligibility

Section 7(f)(3) of the Act provides that "[i]f any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director." 12 U.S.C. 1427(f)(3). Section 932.21(d)(1) of the interim rules implements this provision in virtually identical form.

One comment letter supported this provision, noting that it would be better to have a vacant seat on the FHLBank's board, rather than permit a director from an undercapitalized institution to continue serving, and that the absence of one director on a board of 14 members would not cause undue delay or disruption.

e. Certification and Reporting

Section 932.18(d)(2) of the interim rules requires appointive directors generally to disclose to the Finance Board (i) uninsured deposit or savings accounts in a member, (ii) contractual rights with a member exceeding a minimum threshold of either \$10,000 or 5 percent of the director's total income; and (iii) loans or extensions of credit from a member exceeding \$50,000, except for the purchase of financing of the director's principal residence.

(1) Contractual rights. One comment letter noted that the interim preamble states that for purposes of reporting contractual rights, the interim rules consider the aggregate of contractual rights which the director has with all members of the FHLBank. The commenter noted, however, that interim § 932.18(d)(ii) does not appear to provide for aggregation of contractual rights, but rather requires disclosure of certain contractual rights with "a" member of such FHLBank. As a commenter correctly noted, the interim (and proposed) rules do not require aggregation of contractual rights with all members. Accordingly, for purposes of determining whether to make disclosures under this provision, the director should determine whether he or she has contractual rights with a member of the FHLBank served that exceed either \$10,000 or 5 percent of total income, whichever is less, on an annual basis.

Another commenter questioned the meaning of "contingent or fixed" contracts. The commenter also recommended that only contractual rights in the current, not the previous, calendar year be required to be

disclosed, because disclosure is required annually in other subsections of the interim rules. The Finance Board has determined that contractual rights in the previous calendar year also should be required to be disclosed, as they are for federal government employees on the Standard Form 278. Such disclosures will alert the Finance Board to any recent dealings by the directors with members (and related affiliates) that could raise conflict of interest issues for the director at the FHLBank.

(2) Reporting of ineligibilities. Section 932.18(h) of the interim rules requires appointive directors to report known or suspected ineligibilities to the Finance Board. One commenter suggested that the reports also be provided to the affected FHLBank in order to apprise the FHLBank of any potential vacancies on its board. It is important that the reports be provided to the Finance Board in order that it may determine, pursuant to the regulations, whether the directors satisfy the eligibility qualifications to serve as FHLBank directors. The Finance Board would of course promptly notify a FHLBank of any impending vacancies on the FHLBank's board. It should be noted that there is nothing in the regulations that would prohibit the directors from providing their reports to the FHLBanks as well as the Finance Board.

2. Community Interest Director Eligibility.

Section 7(a) of the Act provides that "[a]t least 2 of the * * * Bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections." 12 U.S.C. 1427(a). Section 931.15 of the interim rules defines a "community interest director" generally as a "member in good standing of a consumer or community organization." Interim § 931.17 defines a "consumer or community organization" generally as an organization that "has at least a two year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections."

One commenter pointed out that the interim preamble states that a community interest director must come from the organization's membership, "so long as the director is actively involved in one of the organization's qualifying interests." Interim § 931.15, however, does not appear to require that the director be actively involved, but merely

states that the director must be a "member in good standing" of the organization. The proposed regulations would require that the director be "actively involved" in representing one of the four designated consumer or community interests at the time of his or her appointment as a community interest director, because past experience or simple affiliation with an organization is not enough to show current experience and commitment.

Section 932.19(b) of the interim rules states that if the consumer or community organization from which the community interest director was chosen "changes its principal purpose" to something other than one of the four designated consumer or community interests, the director becomes ineligible to serve as a community interest director. One comment letter noted that this "principal purpose" requirement appears inconsistent with statements in the interim preamble suggesting that an organization qualifies if it is actively involved in any one of the four designated consumer or community interests, even if the organization has some other principal purpose. The principal purpose requirement also is inconsistent with the definition of "consumer or community organization" in interim (and proposed) § 931.17, which does not require that the organization's principal purpose be the representation of such consumer or community interests. Accordingly, the proposed regulations would delete the principal purpose requirement as a cause of ineligibility for community interest directors.

3. Elective Director Eligibility.

a. Qualifications

1. *Residency requirement.* See discussion *supra* under Appointment Director Eligibility.

2. *Compliance with regulations and policies.* See discussion *supra* under Appointive Director Eligibility.

b. Minimum Capital Requirements

Section 7(b) of the Act provides that "[n]o person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of * * * Bank director." 12 U.S.C. 1427(b). Section 932.21(b)(1) of the interim rules implements this provision by providing that such person is ineligible to serve as a FHLBank elective director, "regardless of any exemption or exception granted by any appropriate regulatory agency." Interim § 932.21(b)(2) also provides that "a person whose member failed to meet the applicable minimum regulatory

capital requirements shall not be eligible for election to a directorship during the calendar year in which the failure occurred."

One comment letter supported the exemption provision in § 932.21(b)(1) on the basis that directors and officers from institutions failing their capital requirements would have to direct their attention to restoring their institution's capital position, and could not devote their full attention to running the FHLBank. The letter noted that FHLBank directors representing sound institutions would be more likely to make objective decisions about FHLBank management, "rather than being swayed by whether some decision might affect their particular FHLBank."

In addition, the comment letter agreed that an elective director should not be eligible for reelection as a FHLBank director during the calendar year in which the institution failed its capital requirements because time is needed to allow full recovery of the institution.

4. Other Comments

Several comment letters suggested minor editorial and stylistic changes to the language of the interim rules. In addition, the comment letters identified a number of internal references to paragraph cites in the interim rules and preamble that are inconsistent, and which have been corrected in the proposed rules.

C. Analysis of Proposed Rulemaking

1. Amendments to Parts 931 and 932

a. Appointment Director Eligibility—Section 932.18

1. *Qualifications—Section 932.18(a).* The proposed regulations would change the heading from "General" to "Qualifications" in order to more accurately reflect the substance of this paragraph. In addition, paragraph (a)(3) would be revised to include the requirement that the director comply with all requirements of the Act, in addition to the requirement under the interim rules of compliance with regulations and policies of the Finance Board and the FHLBank.

2. *Prohibited Service, Financial Interests and Financial Relationships—§ 932.18(b).* The proposed regulations would add the terms "Prohibited service" and "financial relationships" to the heading to reflect that this paragraph covers not only prohibited financial interests, but also prohibited service and financial relationships. The paragraph also would be divided into four separate subsections for each of the various prohibitions, discussed in (a)–(d) below.

(a) Prohibited Service—Section 932.18(b)(1) and (2)

Section 7(a) of the Act prohibits an appointive director from serving, during his or her term of office, as "an officer of any * * * Bank or a director or officer of any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implements this provision by providing that no appointive director may "serve as an officer of any Bank or a director or officer of any member of such bank, * * * non-diversified holding company, subsidiary or affiliate, thereof * * *."

The Finance Board has received inquiries from the FHLBanks as to whether this provision prohibits service only at a member of the FHLBank, on whose board the director serves, or at a member of any FHLBank. In addition, questions have arisen as to the scope of the prohibition with respect to holding companies, subsidiaries and affiliates. Interim § 932.18(b) was intended to implement section 7(a) of the Act by prohibiting such service only at a member of the FHLBank the director serves, and at a subsidiary or non-diversified holding company of such member, or an affiliate of that holding company. Proposed § 932.18(b)(2) of the regulations would clarify this intent by prohibiting such service at "any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank on whose board the director serves."

(b) Prohibited Financial Interest—Section 932.18(b)(2)

1. *Scope of prohibition.* Section 7(a) of the Act provides that an appointive director may not, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Interim § 932.18(b) provides that no appointive director may "serve as an officer of any Bank or a director or officer of any member of such Bank, or hold shares, or any other financial interest in any member of such Bank, non-diversified holding company, subsidiary or affiliate, thereof, * * *."

As above, questions have been raised as to whether the prohibition on financial interests applies only to such interests in members of the FHLBank the director serves, or to members of any FHLBank, and the scope of its application to holding companies, subsidiaries and affiliates. As with the prohibition on service, proposed § 932.18(b)(2) would clarify that the prohibition applies to financial interests in "any member (or a subsidiary or non-

diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves." Interim § 932.18(c) would be deleted as it is redundant with the language in interim § 932.18(b), as well as with new § 932.18(b)(2).

2. Definition of "Financial Interest"—Section 931.20. The proposed regulations would revise the definition of "financial interest" in interim § 931.20 in several ways. First, the financial interest and financial relationship definitions would be divided into two separate sections (931.20 and 931.30, respectively).

Second, the definition of financial interest would be expanded to include direct or indirect control of equity and debt interests, and not simply ownership of such interests as in the interim rules, because ownership too narrowly defines the types of financial interests over which a director may have influence. In addition, the proposed regulations would revise the definition of "control" in interim § 931.18 because the meaning of the phrase "otherwise hold the power to control" may be unclear. The new definition would state: "To own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company." This definition more closely resembles the definitions of "control" in the FRB's Regulation O, and OTS's savings and loan holding company regulations. 12 CFR 215.2(b), 583.7, respectively.

Third, the regulations propose to revise the definition to include financial interests of the director's "immediate family members," thereby allowing deletion of separate § 932.18(e)(1) which attributed to the director financial interests of his or her "spouse, children, or other dependents." The new term "immediate family member" would be defined in § 931.32 to mean the director's spouse, the director's minor children, and any other individual related by blood, marriage or adoption residing in the director's household. The director's spouse and minor children need not live in the director's household, but other persons related by blood, marriage or adoption (such as adult children of the director) must reside in the director's household in order to be considered "immediate family members." The revisions therefore would bring within the definition of "financial interest" additional financial interests over which a director may have influence but which are not covered by the interim section.

Fourth, the revised section would define a "financial interest" of a director to include financial interests of the director's "related interests," and the

"related interests" of the director's immediate family members. A "related interest" would be defined in new § 931.40 as a company controlled by the director. This revision thus would expand the financial interests attributed to a director by attributing to the director the related interests of his or her immediate family members. Revised § 931.20 also would alter the scope of interim § 932.18(e)(2), which would be deleted, by attributing to the director financial interests of companies the director controls, as opposed to companies in which the director has only an ownership interest.

(c) Prohibited Financial Relationship—Section 932.18(b)(3).

1. Nature and scope of prohibition. New § 932.18(b)(3) would restate, and elaborate on, interim § 932.18(d) in the form of prohibitory instead of permissive language. Interim § 932.18(d) would be deleted and the disclosure requirements in (d)(2) moved to new § 932.18(f)(3). New § 932.18(b)(3) would prohibit an appointive director from having a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank the director serves that generally is not, to the director's knowledge, transacted in the ordinary course of business and on substantially the same terms as those prevailing at the time for comparable transactions. This would ensure that directors are not deemed ineligible to serve as FHLBank directors if they did not know that the transaction in which they engaged with a member was not carried out in the ordinary course of business or on substantially similar terms. The language on terms and creditworthiness would be revised to track in most respects similar language in the FRB's Regulation O. See 12 CFR 215.4(a).

2. Definition of "Financial Relationship"—Section 931.30. The proposed regulations would continue to define a "financial relationship" as in interim section 931.20 to mean: (a) any type of deposit or savings account; (b) any other contractual right to the payment of money, whether contingent or fixed, in the previous calendar year or the current calendar year; and (c) any type of loan or extension of credit. As stated earlier, the definition of "financial relationship" would be moved from interim § 931.20 to new § 931.30. As with the amended definition of "financial interest," this definition also would be revised to include financial relationships of the director's immediate family members and related interests,

and the immediate family members' related interests, as well as those of the director. The revisions therefore would bring within the definition of "financial relationship" additional financial relationships over which a director may have influence but which were not covered by the interim section.

(d) Prohibited Service as Result of Past Due or Loss Loans—Section 932.18(b)(4)

New § 932.18(b)(4) would provide that, in the Finance Board's discretion, no person may serve as an appointive director if such person (i) has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than 30 days past due, or (ii) has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the Resolution Trust Corporation ("RTC"), within the past three years. A "loss" would be defined in new § 931.38 as (i) an obligation as to which there is a continuing legal claim that is owed that is 12 months or more delinquent as to principal or interest, or (ii) an obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory. See 12 CFR 1606.2(g) (RTC's independent contractor ethics regulations). This provision is deemed necessary by the Finance Board to enable it to monitor appointive directors and director candidates for instances of poor financial judgment or creditworthiness (or the appearance of such) which, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility of the FHLBank's operations.

3. Permitted Financial Interests—Mutual Funds—Section 932.18(c)

The proposed regulations would amend the heading by adding the words "Permitted financial interests" to indicate that certain ownership interests in mutual funds that invest in FHLBank members are permitted financial interests. This section would be moved from interim § 932.18(f), as the provision on permitted financial interests more logically follows directly after the provision on prohibited financial interests.

The word "solely" would be inserted to clarify that the director's indirect interest in financial interests of members may arise only through

ownership of shares in mutual funds. The language would be revised to authorize ownership of shares in "one or more diversified" mutual funds "that have invested in the member," as discussed in the FIRREA Conference Report. See FIRREA Conf. Rep. at 425. The proposed regulations also would define a diversified mutual fund by reference to the definitions of such company as set forth in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-5(a), (b)(1). In addition, the regulations propose to revise this section to provide that an appointive director may have interest in mutual funds that have invested in a member of the FHLBank the director serves, provided the director does not contribute to investment decisions of the funds. The proposed regulations would not prohibit the director from contributing to investment decisions of other mutual funds that have not invested in members within the district of the FHLBank the director serves.

4. Prohibited Acceptance of Things of Monetary Value—Section 932.18(d)

New § 932.18(d) would prohibit appointive directors from soliciting or accepting, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank the director serves, or from a person who generally (i) seeks financial relationships with the FHLBank System; (ii) has interests affected by the director's duties; or (ii) is an officer, director, controlling shareholder, employee or agent of any member (or such subsidiary, holding company or affiliate), trade organization of members (or such subsidiaries, holding companies or affiliates), or company that controls a member (or such subsidiary, holding company or affiliate), unless the director generally is motivated by obvious family or personal relationships, or the things are of nominal value. The prohibition is intended to ensure that the director's performance of his or her duties as FHLBank director is not improperly influenced, or that there is no appearance of improper influence, as a result of such activities.

5. Effect of Ineligibility—Section 932.18(e)

Interim § 932.18(g) would become revised § 932.18(e). No substantial revision would be made to this paragraph.

6. Certification and Reporting—Section 932.18(f)

a. Certification—Section 932.18(f)(1)

Interim § 932.18(h)(1) requires each appointive director to certify to the Finance Board by January 15 of each year that he or she continues to meet all applicable eligibility qualifications. This section would be revised in several ways. First, the revised section would appear in proposed § 932.18(f)(1). Second, the new section would implement Finance Board practice by requiring appointive director candidates to certify their eligibility prior to appointment. Third, the new provision would move up the certification deadline from January 15 to November 15 in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. Candidates and appointive directors also would be required to certify their eligibility on new Form A-1 and A-2, respectively.

b. Reporting of Ineligibilities—Section 932.18(f)(2)

Interim § 932.18(h)(2) provides that if an appointive director knows or suspects that he or she is ineligible, the director must report the factual basis for the ineligibility, with specificity, to the Finance Board in writing within 30 days of the event that caused or may have caused the ineligibility, and the specific actions the director will take to remedy the ineligibility. New § 932.18(f)(2) would clarify that the director must report ineligibilities "at any time" the director knows or suspects he or she is ineligible. Appointive directors would be required to report the ineligibilities on new Form A-2. In addition, the requirement in the interim section that the director disclose proposed remedies would be deleted because proposed remedies are only required to be reported when an appointive director seeks an opportunity to cure. Those reporting provisions would be set forth in a separate section on opportunity to cure (interim § 932.18(i) and new § 932.18(g)).

c. Reporting of Certain Financial Relationships—Section 932.18(f)(3)

Under interim § 932.18(d)(2), each appointive director is required to report on Finance Board disclosure forms:

(i) Any type of deposit or savings account in a member of the FHLBank the director serves exceeding the limits of federal deposit insurance;

(ii) Any contractual rights with a member of the FHLBank the director serves exceeding a minimum threshold

of either \$10,000 or 5 percent of the director's total income; and

(iii) Any loans or extensions of credit by a member of the FHLBank the director serves to such director exceeding \$50,000, except such loans or extensions of credit for the purpose of purchasing or financing the director's principal residence.

In addition, the Finance Board requires appointive (and elective) directors to report on the disclosure forms any loans from a member of the FHLBank the director serves to the director or a business with which the director is affiliated that is or has ever been more than 30 days past due or that caused a loss to the member. "Loss" is not defined in the interim rules or on the current disclosure forms.

Under interim § 932.18(h)(3)(i)-(iii), the disclosures also are required to be made by appointive directors prior to the initial appointment, and annually thereafter by January 15 of each year. The proposed regulations would move the disclosure provisions of interim paragraph (d)(2) to new § 932.18(f)(3) (and paragraph (h)(3)(i)-(iii) would be deleted as redundant and inconsistent). Interim paragraph (d)(2) would be revised as follows:

(a) *New procedural requirements.* First, as with the certification deadline, the disclosure deadline would be changed from January 15 to November 15 in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. Second, candidates and appointive directors would be required to make the disclosures of financial relationships "at any other time they arise," and not just by November 15 of each year. Third, candidates and appointive directors would be required to disclose the financial relationships on new Forms A-1 and A-2, respectively.

(b) *New substantive requirements.* First, the disclosure requirements in the revised section would be broader because, as discussed earlier under the definition of "financial relationship," the regulations propose to expand the definition of "financial relationship" to include financial relationships of the director's immediate family members and related interests, and the immediate family members' related interests. Second, the director would be required to disclose such financial relationships not only with a member of the FHLBank the director serves, but also with any subsidiary or non-diversified holding company of the member, or affiliate of such holding company.

Third, the director would be required to disclose such financial relationships of any company for which the director serves as a director, partner or executive officer. This disclosure requirement is intended to ensure that the Finance Board is aware of any significant dealings between the director's company and a member (e.g., contracts pursuant to which the director receives a percentage financial interest) that could raise conflict of interest issues for the director at the FHLBank. New § 931.28 would define an "executive officer" as a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company. See FRB's Regulation O, 12 CFR 215.2(d).

Fourth, with respect to the disclosure of contractual rights exceeding \$10,000 or 5 percent of the director's total income, whichever is less, "income" would be defined in new section 931.34 to mean the director's adjusted gross income as reported on his or her most recent federal income tax return.

Fifth, the director would be required to disclose any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that (i) is or has ever been, within the past three years, more than 30 days past due, or (ii) the director knows caused a loss to such institution (or subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three years. The definition of "loss" (in new § 931.38) would be the same as that for proposed § 932.18(b)(4). (See discussion *supra* under § 932.18(b)(4).) Again, the purpose of such disclosures is to enable the Finance Board to monitor directors and director candidates for instances of poor financial judgment or creditworthiness (or the appearance of such) that, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility of the FHLBank's operations.

Finally, the last paragraph of new § 932.18(f) would state that in addition to the failure to make any certifications required under paragraph (f) (see interim § 932.18(h)(3)(ii)), the failure to make any disclosures required under paragraph (f) shall render the director candidate or appointive director ineligible to serve as a FHLBank director. The proposed regulations would move this provision from interim § 932.18(h)(3)(ii) to the end of revised

§ 932.18(f), as it should apply to the failure to make any of the required disclosures and certifications, and not simply to the disclosures required under interim paragraph (h)(3)(ii).

7. Opportunity to Cure—Section 932.18(g)

Interim § 932.18(i) provides appointive directors with an opportunity to cure ineligibilities arising because of changes in law, FHLBank membership, marital status, inheritance or gift, which occur subsequent to appointment. Appointive directors with such an ineligibility may retain their office if they report the ineligibility and the proposed remedy within 30 days of the event causing the ineligibility, or the effective date of the interim rules, whichever is later, and remedy the ineligibility within up to 90 days (as determined by the Finance Board) of the causal event, or the effective date of the interim rules, whichever is later.

New § 932.18(g) would provide appointive directors with an opportunity to cure ineligibilities arising from any cause, on the basis that the opportunity to cure under the interim rules is too limited in scope. In addition, the new section would provide that it is within the Finance Board's discretion whether or not to allow the appointive director the opportunity to cure.

b. Community Interest Director Eligibility—Section 932.19

The regulations propose to revise the heading by adding the word "eligibility" in order to clarify that this section sets forth the eligibility qualifications for community interest directors.

1. *Definition of "Community Interest Director" and "Consumer or Community Organization"*—Sections 931.15 and 931.17. Section 7(a) of the Act provides that at least two of the appointive directors on each FHLBank's board shall be "representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing or financial consumer protections." 12 U.S.C. 1427(a). Interim § 931.15 defines a "community interest director" generally as an appointive director who is a member in good standing of a consumer or community organization that has more than a two-year history of representing one of the four designated consumer or community interests, and who has "experience and commitment to consumer and community interests." A "consumer or community organization" is defined in interim § 931.17 generally as an organization which "for a period of at least two years

has advocated, represented, promoted or been actively involved in the protection, improvement or expansion of consumer or community interests" in any one of the four designated consumer or community interest areas.

The regulations propose to revise these definitions in several ways. First, the requisite elements for being a community interest director would be set out in separate paragraphs (a)–(e) of § 931.15 for greater clarity. Second, the Finance Board believes that the requirement that a community interest director be a "member in good standing" of the organization could restrict too narrowly the number of available community interest director candidates who may serve. Accordingly, the regulations propose to revise the definition in § 931.15 to permit a "director, officer, employee or member in good standing of a consumer or community organization" to serve as community interest director.

Third, the Finance Board believes that the community interest director should come from a consumer or community organization "operating within the district of the Bank the director will be serving." Section 931.15, thus, would be revised accordingly. This would ensure that the director has familiarity with the district and its problems and concerns. In addition, revised § 931.17 would provide that where the director candidate works for a local chapter or similar entity of a national consumer or community organization, the local chapter or entity itself must have represented one of the four designated consumer or community interests for a period of more than two years.

Fourth, revised § 931.15 would provide that the community interest director "possess more than two (2) years of recent experience" representing one of the four designated consumer or community interests, in order to ensure that the director has the necessary personal expertise to adequately represent consumer or community interests on the FHLBank's board.

Finally, revised § 931.15 would require that the director be "actively involved" in representing one of the four designated consumer or community interests "at the time of his or her appointment as a community interest director," because past experience or simple affiliation with an organization is not enough to show current experience and commitment.

In addition, the definition of "consumer or community organization" in interim § 931.17 would be shortened and simplified to state: "[a]ny organization (or local chapter or similar

entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections."

2. *Appointment and selection.* The heading in interim § 932.19(a) would be changed from "Requirements" to "Appointment" to more accurately reflect the substance of this paragraph. In addition, the first sentence in interim paragraph (a) would be deleted as moot.

The proposed regulations would move interim § 932.19(c) on the "Selection process" to paragraph (b), as it relates to the appointment process and therefore should follow directly paragraph (a).

3. *Ineligibility.* Interim § 932.19(b) on "Effect of ineligibility" would become paragraph (c) in the proposed regulations. The heading would be changed to "Ineligibility," because the provision states when ineligibility arises, not the effect of such ineligibility. In addition, the proposed regulations would set forth the various causes of ineligibility in separate paragraphs (c) (1)-(2) for greater clarity.

Interim § 932.19(b) provides that a community interest director becomes ineligible to serve: (i) if the director ceases his or her personal involvement, or ceases to be affiliated with a consumer or community organization, or (ii) if the organization from which the director was chosen (a) changes its principal purpose to something other than one of the four designated consumer or community interests, or (b) ceases to operate, is dissolved, or declared insolvent.

New § 932.19(c) would revise this provision by providing that a community interest director becomes ineligible if the director: (i) ceases to meet the definition of "community interest director" (i.e., fails to satisfy any of the requirements for appointive director under section 7(a) of the Act and part 932, or is no longer a director, officer, employee or member in good standing of a consumer or community organization); or (ii) the organization the director serves ceases to represent one of the four designated consumer or community interests, or ceases to operate, is dissolved or declared insolvent. The proposed regulations would delete the "principal purpose" clause of the interim rules because the definition of "consumer or community organization" in § 931.17 (under both the interim and proposed rules) does not require that the organization's principal purpose be the representation of such consumer or community interests.

In addition, a director should not become ineligible if the organization

from which the director was chosen ceases to operate, as long as the director continues an affiliation with some other qualifying consumer or community organization. As discussed earlier under proposed § 932.18(g), appointive directors (including community interest directors) should have, in the Finance Board's discretion, an opportunity to cure ineligibilities arising from any source. Thus, if a community interest director ceases to be a director, officer, employee or member in good standing of a consumer or community organization, or the organization the director serves ceases to operate, the director should have the opportunity, in the Finance Board's discretion, to cure the ineligibility by becoming a director, officer, employee or member in good standing of another qualifying consumer or community organization.

c. Minimum Number of Elective Directorships—Section 932.20

The regulations propose to revise this section to reflect the language of section 7(c) of the Act by adding the December 31, 1960 date.

d. Elective Director Eligibility—Section 932.21

1. *Qualifications—Section 932.21(a).* As under § 932.18(a) for appointive directors, the heading would be changed from "General" under the interim rules to "Qualifications" under the proposed regulations to more accurately reflect the substance of this paragraph. In addition, the proposed regulations would revise paragraph (a)(4) to include the requirement that the director comply with all requirements of the Act, in addition to the requirement under the interim rules of compliance with regulations and policies of the Finance Board and the FHLBank.

2. *Prohibited service as result of past due or loss loans—Section 932.21(b).* This provision would be identical to proposed § 932.18(b)(4) for appointive directors, except that it would apply to elective directors. Thus, new § 932.21(b) would provide that no person may, in the Finance Board's discretion, serve as an elective director if such person (i) has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than 30 days past due, or (ii) has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three years. "Loss" is defined the same as discussed

above. Again, this provision is deemed necessary by the Finance Board to enable it to monitor elective directors and director nominees for instances of poor financial judgment or creditworthiness (or the appearance of such) which, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility of the FHLBank's operations.

3. *Prohibited acceptance of things of monetary value—Section 932.21(c).* This provision also is identical to proposed § 932.18(d) for appointive directors, except that the soliciting or accepting of things of monetary value by elective directors from members the elective directors represent would not be prohibited.

4. *Minimum capital requirements—Section 932.21(d).* Section 7(b) of the Act provides that "[n]o person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of * * * Bank director." 12 U.S.C. 1427(b). Interim § 932.21(b) implements this provision by prohibiting such service during the calendar year in which the member represented fails to meet applicable minimum regulatory capital requirements, regardless of any exemption or exception granted by the appropriate regulatory agency. Pursuant to this provision, the Finance Board has prohibited persons from serving as elective directors if the member represented failed its minimum capital requirements.

Proposed § 932.21(d) would clarify Finance Board practice that the capital requirements apply only to members the director serves that are located within the FHLBank's district, by adding in paragraph (d)(1) the phrase "any member of the Bank on whose board the person serves." Interim paragraphs (b)(1) and (2) would be consolidated into new paragraph (d)(1), and the language would be simplified, for greater clarity.

Proposed paragraph (d)(2) would be revised in light of the changes made in revised paragraph (d)(1). The phrase in parentheses would be inserted to clarify that the granting by the appropriate regulatory agency of exceptions or exemptions to the capital requirements will not suffice for purposes of satisfying the capital requirements in succeeding years either. "Appropriate regulatory agency" would be defined in new § 931.26 to mean the appropriate federal banking agency as defined in section 2(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for

institutions not governed by such section.

5. *Ineligible director-elect*—Section 932.21(e). No substantive changes would be made to this paragraph.

6. *Effect of ineligibility*—Section 932.21(f). Section 7(f)(3) of the Act provides that "[i]f any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a bank director." 12 U.S.C. 1427(f)(3). By contrast, an appointive director who ceases to satisfy the requisite eligibility qualifications "may continue to act as a Bank director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first." 12 U.S.C. 1427(f)(2). Interim § 932.21(d)(2) provides that "[a]ny vote by an elective director during a period when such director has ceased to have the qualifications set forth in section 7(a) [sic] of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period."

The regulations proposes to delete interim § 932.21(d)(2) in order to be consistent with the requirement of section 7(f)(3) of the Act that an elective director not continue to serve as a FHLBank director if he or she fails to satisfy the eligibility qualifications.

7. *Certification and reporting*—Section 932.21(g). New § 932.21(g) would replace interim section 932.21(e).

a. *Certifications*—Section 932.21(g)(1).—The revisions to the certification requirements for appointive director in new § 932.18(f)(1) also would apply for elective directors in new § 932.21(g)(1), except that director nominees and elective directors would be required to certify their eligibility by December 1 instead of January 15 of each year on new Forms E-1 and E-2, respectively.

b. *Reporting of Ineligibilities*—Section 932.21(g)(2).—Interim § 932.21(e)(2) requires elective directors to report immediately to the Finance Board any known or suspected ineligibilities. Proposed § 932.21(g)(2) would require elective directors to report such ineligibilities within 30 days of the event that caused or may have caused the ineligibility, the same time period afforded to appointive directors. In addition, as with appointive directors, the new provision would clarify that the elective director must report such ineligibilities "at any time" the director knows or suspects he or she is ineligible.

c. *Reporting of Certain Financial Relationships*—Section 932.21(g)(3).—The interim rules do not require elective

directors to disclose certain relationships as required for appointive directors.

New § 932.21(g)(3) would set forth in the regulations the same reporting procedures and disclosure requirements for elective directors as are required for appointive directors, except that director nominees and elective directors would report such financial relationships by December 1 of each year, and at any other time they arise, on new Forms E-1 and E-2, respectively.

In addition, as with appointive directors, the proposed regulations would include a sentence stating that the failure to make any certifications or disclosures required under § 932.21(g) shall render the director nominee or elective director ineligible to serve as a FHLBank director.

e. *Vacancies in Directorships*—Section 932.22

1. *Appointive director vacancy*. The proposed regulations would revise the language in § 932.22(a) by adding the phrase "for unexpired term" in order to more accurately reflect the statutory language in section 7(f)(2) of the Act.

2. *Elective director vacancy*. The same revision made for appointive director vacancies in paragraph (a) also would be made for elective director vacancies in proposed § 932.22(b). The language also would be revised to reflect the language of section 7(f)(2) of the Act by adding that the vacancy shall be filled by a majority vote of the remaining directors, "regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors." The proposed regulations also would revise paragraph (b) to indicate that the Finance Board shall declare elected such person selected by the remaining FHLBank directors only if the person satisfies all applicable eligibility qualifications. In addition, the section would be revised for greater clarity by adding: "in which case the vacancy may be filled by an eligible director from another state in the Bank's district."

f. *Certification and Disclosure Forms*—Section 932.23

This new section would identify the new certification and disclosure forms required to be completed and submitted to the Finance Board by appointive director candidates, appointive directors, elective director nominees and elective directors.

2. *Part 922*.

a. *Definitions*—Section 922.1

Proposed § 922.1 would provide that the definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.28, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also apply where such terms are used in part 922.

b. *Qualifications*—Section 922.2

Section 2A(b) of the Act provides that the management of the Finance Board shall be vested in a Board of Directors consisting of five directors, who are the Secretary of Housing and Urban Development, and four citizens of the United States appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1422a(b)(1). Accordingly, proposed § 922.2(a) would provide that each Finance Board appointive director shall be a citizen of the United States. In addition, as with appointive and elective directors, § 922.2(b) would provide that each Finance Board appointive director shall comply with all requirements of the Act, and the regulations and policies of the Finance Board presently in effect or to be established by the Finance Board.

c. *Prohibited Service, Financial Interests and Financial Relationships*—Section 922.3

1. *Prohibited Service*—Section 922.3(a). Section 2A(b)(2)(C)(i) of the Act provides that no Finance Board director may "serve as a director or officer of any * * * Bank or any member of any Bank." 12 U.S.C. 1422a(b)(2)(C)(i). Proposed § 922.3(a) would implement this provision by providing that no Finance Board appointive director may serve as a director or officer of any Bank or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company). However, in contrast to the prohibition that applies to FHLBank appointive directors, the prohibition with respect to serving as officers or directors of members would apply to service at any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves.

2. *Prohibited Financial Interests*—Section 922.3(b).—a. *Scope of Prohibition*. Section 2A(b)(2)(C)(ii) of the Act provides that no Finance Board director may " * * * hold shares of, or any other financial interest in, any member of any such Bank." 12 U.S.C. 1422a(b)(2)(C)(ii). Proposed § 922.3(b) would implement this provision by providing that, as with FHLBank

appointive directors, a Finance Board appointive director may not have a financial interest in any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company). However, the prohibition would apply to financial interests in any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves.

b. *Definition of "Financial Interest"—Section 922.1.* The definition of a "financial interest" of a Finance Board appointive director would be the same as the definition of the term for FHLBank directors (see discussion *supra* under § 931.20).

3. *Prohibited Financial Relationships—Section 922.3(c).*—a. *Nature and Scope of Prohibition.* As with FHLBank appointive directors, proposed § 922.3(c) would prohibit a Finance Board appointive director from having a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is not, to the director's knowledge, transacted in the ordinary course of business and on substantially the same terms as those prevailing at the time for comparable transactions. However, the prohibition would apply to such financial relationships with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves.

b. *Definition of "Financial Relationship"—Section 922.1.* The definition of a "financial relationship" of a Finance Board appointive director would be the same as the definition of the term for FHLBank directors (see discussion *supra* under § 931.30).

d. *Permitted Financial Interests—Mutual Funds—Section 922.4*

Proposed § 922.4 would provide that, as with FHLBank appointive directors, a Finance Board appointive director may have an interest in securities or other financial interests of any member of any FHLBank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a)(1) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-5(a)(1), (b)(1)) that have invested in the member. However, proposed section 932.18(c) would prohibit FHLBank appointive directors from contributing to investment decisions of funds that have invested in members of the FHLBank the director serves. Proposed § 922.4 would prohibit Finance Board appointive directors from contributing to investment decisions of funds that have

invested in any member of any FHLBank.

e. *Prohibited Acceptance of Things of Monetary Value—Section 922.5*

The prohibition on soliciting or accepting things of monetary value proposed in § 932.18(d) for FHLBank appointive directors also would apply to Finance Board appointive directors. However, the prohibition would apply to such conduct with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. This proposed requirement is similar to the provision in federal regulations that prohibits the finance board directors generally from accepting things of monetary value from any person who: (1) seeks contractual or other business or financial relationships with the agency; (2) has interests affected by the director's duties; or (3) conducts operations or activities regulated by the agency. See 5 CFR 735-202. However, proposed § 922.5 is more specifically tailored to prohibiting such conduct *vis a vis* the FHLBank System, as opposed to just the agency itself.

As with FHLBank appointive directors, the prohibition is intended to ensure that the Finance Board appointive director's performance of his or her duties as Finance Board director is not improperly influenced, or that there is no appearance of improper influence, as a result of such activities.

f. *Certification and Reporting—Section 922.6.*

The proposed regulations would establish certification and disclosure requirements for Finance Board appointive directors that are similar in nature to those required for FHLBank appointive and elective directors in part 932.

1. *Certifications—Section 922.6(a).* Proposed section 922.6(a) would require that upon appointment, and annually thereafter by November 15 of each year, each Finance Board director shall certify on Form FB-1 that he or she meets all applicable requirements for his or her appointment set forth in section 2A(b)(1)(B) and (2)(C) of the Act and part 922.

2. *Reporting of Noncompliance—Section 922.6(b).* Proposed § 922.6(b) would provide that if a Finance Board appointive director knows or suspects at any time that he or she does not meet any of the requirements for his or her appointment set forth in section 2A(b)(1)(B) and (2)(C) of the Act or part 922, the director must report the specific factual bases for the known or suspected noncompliance to the Finance Board on Form FB-1 within 30 days of

the event that caused or may have caused his or her compliance.

3. *Reporting of Certain Financial Relationships—Section 922.6(c).* Proposed § 922.6(c) would provide that upon appointment, and annually thereafter by November 15 of each year, and at any other time they arise, each Finance Board director must disclose to the Finance Board on Form FB-1 the same types of financial relationships with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that are required to be disclosed by FHLBank appointive directors under proposed § 932.18(f)(3). However, the Finance Board directors would be required to disclose such financial relationships with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. In addition, as with FHLBank appointive directors, Finance Board appointive directors would be required to disclose such financial relationships of any company for which the Finance Board director serves as a director, partner or executive officer.

g. *Certification and Disclosure Form—Section 922.7*

Proposed § 922.7 would identify the certification and disclosure form required to be completed and submitted to the Finance Board appointive directors.

D. *Regulatory Flexibility Act*

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the undersigned hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

E. *Paperwork Reduction Act*

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget ("OMB") for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The title, description of need and use, and respondent description for the information collection requirements are discussed in the SUPPLEMENTARY INFORMATION.

Any comments on this proposed information collection should be sent to: Gary Waxman, Paperwork Reduction Project, OMB, Room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.15 and 1320.21, the following table discloses the

estimated annual reporting burden for each collection of information in the

proposed rule.

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collection	Average number of respondents	×	Average number of responses per respondent	=	Total average responses	×	Average hours per response	=	Total average hours
1. A-1 Appointive Director Candidates—Personal Certification and Disclosure Form.	100		1		100		1		100
2. A-2 Appointive Directors—Personal Certification and Disclosure Form.	72		1		72		1		72
3. E-1 Elective Director Nominees—Personal Certification and Disclosure Form.	150		1		150		1		150
4. E-2 Elective Directors—Personal Certification and Disclosure Form...	72		1		72		1		72
Totals.....	394		1		394		1		394

List of Subjects in 12 CFR

Part 922

Conflict of interests.

Part 931

Federal home loan banks.

Part 932

Conflict of interests, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER A—GENERAL

Part 922 is amended by revising the part heading and by adding text to read as follows:

PART 922—BOARD OF DIRECTORS AND EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Board of Directors Responsibilities and Conduct

Sec.

- 922.1 Definitions.
- 922.2 Qualifications.
- 922.3 Prohibited service, financial interests and financial relationships.
- 922.4 Permitted financial interests—mutual funds.
- 922.5 Prohibited acceptance of things of monetary value.
- 922.6 Certification and reporting.
- 922.7 Certification and disclosure forms.

Authority: 12 U.S.C. 1422a, 1422b.

§ 922.1 Definitions.

The definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.28, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also shall apply where such terms are used in this part.

§ 922.2 Qualifications.

Each Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall:

(a) Be a citizen of the United States; and

(b) Comply with all requirements of the Act, and the regulations and policies of the Board presently in effect or to be established by the Board.

§ 922.3 Prohibited service, financial interests and financial relationships.

(a) No Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall serve as a director or officer of any Bank, or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(b) The financial interest prohibition set forth in § 932.18(b)(2) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that the reference to any member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(c) The financial relationship prohibition set forth in § 932.18(b)(3) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.4 Permitted financial interests—mutual funds.

A Board director appointed pursuant to section 2A(b)(1)(B) of the Act may have an interest in securities or other financial interests of any member of any Bank that arises solely through ownership of shares or other investment

units of one or more diversified mutual funds (as defined in section 5 (a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-5 (a), (b)(1)) that have invested in the member, provided the director does not contribute to investment decisions of the fund.

§ 922.5 Prohibited acceptance of things of monetary value.

The prohibition on soliciting or accepting things of monetary value set forth in § 932.18(d) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.6 Certification and reporting.

(a) Upon appointment, and annually thereafter by November 15 of each year, each Board director shall certify in writing to the Board's designated agency ethics official on Form FB-1 that he or she meets all applicable requirements for his or her appointment set forth in section 2A(b) (1)(B) and (2)(C) of the Act and this part.

(b) If a Board appointive director knows or suspects at any time that he or she does not meet any of the requirements for his or her appointment set forth in section 2A(b) (1)(B) and (2)(C) of the Act or this part, the director shall report the specific factual basis for the known or suspected noncompliance in writing to the Board's designated agency ethics official on Form FB-1 within thirty (30) days of the event that caused or may have caused his or her noncompliance.

(c) Upon appointment, annually thereafter by November 15 of each year, and at any other time they arise, each

Board director shall fully disclose in writing to the Board's designated agency ethics official on Form FB-1 any financial relationships set forth in § 932.18(f)(3) of this chapter of such director or company for which such director serves as a director, partner or executive officer, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.7 Certification and disclosure forms.

The following form(s) shall be completed and submitted to the Board's designated agency ethics official pursuant to the requirements of § 922.6 of this part:

Form FB-1—Finance Board Appointive Directors—Personal Certification and Disclosure Form (Required by § 922.6 of this part)

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1442a, 1442b); sec. 7, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1427).

2. Section 931.14 is revised to read as follows:

§ 931.14 Affiliate.

Any person or company which controls, is controlled by, or is under common control with, a member, including any holding company, any subsidiary, or any service corporation of a member.

3. Section 931.15 is revised to read as follows:

§ 931.15 Community interest director.

A director who:

(a) Is appointed by the Board;

(b) Is subject to all of the requirements of appointive directors as set forth in section 7(a) of the Act and part 932 of this chapter;

(c) Is a director, officer, employee or member in good standing of a consumer or community organization operating within the district of the Bank the director will be serving;

(d) Possesses more than two (2) years of recent experience representing consumer and community interests in banking services, credit needs, housing or financial consumer protections; and

(e) Is actively involved in representing consumer or community interests in banking services, credit needs, housing or financial consumer protections at the

time of his or her appointment as a community interest director.

4. Section 931.16 is revised to read as follows:

§ 931.16 Company.

Any corporation, partnership, trust (business or otherwise), joint-stock company, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or similar organization, or any other form of business entity not specifically listed herein.

5. Section 931.17 is revised to read as follows:

§ 931.17 Consumer or community organization.

Any organization (or local chapter or similar entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections.

6. Section 931.18 is revised to read as follows:

§ 931.18 Control.

To own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company.

7. Section 931.19 is revised to read as follows:

§ 931.19 Diversified holding company.

A holding company whose member subsidiary and related activities, as specified in 12 U.S.C. 1467a(c)(2), represented on either an actual or *pro forma* basis less than fifty (50) percent of both its consolidated net worth and its consolidated net earnings at the close of its preceding fiscal year. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principles.

8. Section 931.20 is revised to read as follows:

§ 931.20 Financial interest.

A financial interest of a director or director candidate means the ownership or control, directly or indirectly, by the director or director candidate, his or her immediate family members and related interests, and the immediate family members' related interests, of:

(a) Any shares of common or preferred capital stock;

(b) Any other equity security;

(c) Any debt security or obligation (except deposit or savings accounts), including subordinated debt.

9. Section 931.21 is revised to read as follows:

§ 931.21 Holding company.

Any company that directly or indirectly controls a member, but does not include:

(a) Any company by virtue of its direct or indirect ownership or control of voting stock of a member or a holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the appropriate regulatory agency) as will permit the sale thereof on a reasonable basis; or

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a member if such trust by its terms must terminate within twenty-five (25) years or not later than twenty-one (21) years and ten (10) months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a member on June 28, 1967; or

(2) Is a testamentary trust.

10. Section 931.23 is revised to read as follows:

§ 931.23 Person.

An individual or a company.

11. Section 931.26 is added to read as follows:

§ 931.26 Appropriate regulatory agency.

The appropriate federal banking agency as defined in section 2(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for institutions not governed by such section.

12. Section 931.28 is added to read as follows:

§ 931.28 Executive officer.

A person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company

13. Section 931.30 is added to read as follows:

§ 931.30 Financial relationship.

A financial relationship of a director, director candidate or director nominee means any of the following relationships or activities of the director, director candidate or director nominee, his or her immediate family members and related interests, and the immediate family members' related interests:

(a) Any type of deposit or savings account;

(b) Any other contractual right to the payment of money, whether contingent

or fixed, in the previous calendar year or the current calendar year;

(c) Any type of loan or extension of credit.

14. Section 931.32 is added to read as follows:

§ 931.32 Immediate family member.

The spouse of a person, the person's minor children, and any other individual related by blood, marriage or adoption residing in the person's household.

15. Section 931.34 is added to read as follows:

§ 931.34 Income.

The director's adjusted gross income as reported on his or her most recent federal income tax return.

16. Section 931.36 is added to read as follows:

§ 931.36 Insured depository institution.

An insured depository institution as defined in 12 U.S.C. 1422(12).

17. Section 931.38 is added to read as follows:

§ 931.38 Loss.

(a) An obligation as to which there is a continuing legal claim that is owed that is twelve (12) months or more delinquent as to principal or interest; or

(b) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory.

18. Section 931.40 is added to read as follows:

§ 931.40 Related interest.

A company that is controlled by a person.

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6-7, 47 Stat. 727, 730, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1426-1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

2. Section 932.18 is revised to read as follows:

§ 932.18 Appointive director eligibility.

(a) *Qualifications.* Each appointive director shall:

- (1) Be a citizen of the United States;
- (2) Be a bona fide resident of the district served by the Bank for which he or she is a director; and
- (3) Comply with all requirements of the Act, and the regulations and policies of the Board and of the Bank presently

in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service, financial interests and financial relationships.* (1) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as an officer of any Bank.

(2) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as a director or an officer of, or have a financial interest in, any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, except as provided in paragraph (c) of this section.

(3) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, have a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, that:

(i) Is not, to the director's knowledge, transacted in the ordinary course of business of the member (or such subsidiary, holding company or affiliate) and on substantially the same terms, including fees, interest rates and collateral, where applicable, as those prevailing at the time for comparable transactions by the member (or such subsidiary, holding company or affiliate) with other persons; and

(ii) In the case of a loan or extension of credit by a member (or such subsidiary, holding company or affiliate), does not, to the director's knowledge, involve more than the normal risk of repayment or contain other unusual terms and conditions that increase the risk of loss to the member (or such subsidiary, holding company or affiliate).

(4) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, in the Board's discretion, serve as an appointive director if such director:

(i) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than thirty (30) days past due; or

(ii) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the Resolution Trust

Corporation ("RTC"), within the past three (3) years.

(c) *Permitted financial interests—mutual funds.* An appointive director may have an interest in securities or other financial interests of a member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-5(a), (b)(1)) that have invested in the member, except that where the member is within the district of the Bank on whose board the director serves, the director may not contribute to investment decisions of the fund.

(d) *Prohibited acceptance of things of monetary value.* (1) Except as provided in paragraph (d)(2) of this section, no director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, solicit or knowingly accept, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, or from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relationships with the Bank System;

(ii) Has interests that may be substantially affected by the performance or non-performance of the director's official duties; or

(iii) Is an officer, director, controlling shareholder, employee, or agent of any member (or such subsidiary, holding company or affiliate) or of a trade organization comprised of members (or such subsidiaries, holding companies or affiliates) or of a company that is a controlling shareholder of a member (or such subsidiary, holding company or affiliate).

(2) Paragraph (d)(1) of this section shall not apply provided:

(i) The acceptance of such things of monetary value is motivated by obvious family or personal relationships rather than the business of the persons concerned;

(ii) The things of monetary value accepted are unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, seasonal gifts of nominal value or other similar things of nominal value;

(iii) The things of monetary value accepted are food and accompanying entertainment of nominal value accepted on infrequent occasions in the

ordinary course of a conference, meeting or other working session where such things are incidental to the activity performed; or

(iv) The things of monetary value accepted are non-cash honoraria of nominal value where the gifts are intended as tokens of appreciation for the director's willingness to speak before the group.

(e) *Effect of ineligibility.* (1) If an appointive director shall cease to have any of the qualifications set forth in section 7(a) of the Act or this part, such directorship shall become vacant subject to the cure option in paragraph (g) of this section, but such person may continue to serve as an appointive director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

(2) Any vote by an appointive director during a period when such director has ceased to have any of the qualifications set forth in section 7(a) of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period.

(f) *Certification and reporting.* (1) Prior to the initial appointment each director candidate for appointive director shall certify, and annually thereafter by November 15 of each year each appointive director shall certify, in writing to the Board on Form A-1 or A-2, as applicable, that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part.

(2) If an appointive director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form A-2 within thirty (30) days of the event that caused or may have caused his or her ineligibility.

(3) Prior to the initial appointment each director candidate for appointive director shall fully disclose, and annually thereafter by November 15 of each year and at any other time they arise each appointive director shall fully disclose, in writing to the Board on Form A-1 or A-2, as applicable, the following financial relationships, as defined in § 931.30 of this chapter, of such director candidate or appointive director and of any company for which such director candidate or appointive director serves as a director, partner or executive officer:

(i) Any type of deposit or savings account in a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director candidate or appointive

director serves in excess of the limits of federal deposit insurance;

(ii) Any contractual right with a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of either \$10,000 or 5 percent of the director candidate's or appointive director's total income, whichever is less, on an annual basis;

(iii) Any loan or extension of credit by a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of \$50,000, except a loan or extension of credit for the purpose of purchasing or financing the director candidate's or appointive director's principal residence;

(iv) Any loan or extension of credit from any insured depository institution (or such subsidiary, holding company or affiliate) that:

(A) Is or has ever been, within the past three (3) years, more than thirty (30) days past due; or

(B) The director knows caused a loss to such institution (or subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(4) Failure to make any certifications or disclosures required under this paragraph (f) shall render the director candidate or appointive director ineligible under this part.

(g) *Opportunity to cure.* If an appointive director ceases for any reason occurring subsequent to appointment to satisfy the requisite eligibility qualifications set forth in section 7(a) of the Act or this part, the Board may, in its discretion, give such director a reasonable opportunity to eliminate the cause of the ineligibility provided:

(1) Such director reports the ineligibility, pursuant to paragraph (f)(2) of this section, and the proposed method of remedying the cause of ineligibility, with specificity, within thirty (30) days of the date of the event that caused the ineligibility, or thirty (30) days of the effective date of this section, whichever is later; and

(2) Such director remedies the cause of the ineligibility within a reasonable period of time set by the Board, not to exceed ninety (90) days from the date of the event that caused the ineligibility, or ninety (90) days from the effective date of this section, whichever is later.

3. Section 932.19 is revised to read as follows:

§ 932.19 Community interest director eligibility.

(a) *Appointment.* At least two (2) of the appointive directors for each Bank shall be community interest directors.

(b) *Selection process.* Each Bank shall forward to the Board a list of qualified candidates compiled after active solicitation of nominations from qualified consumer or community organizations within its district. The Board may on its own also solicit nominations of qualified candidates. Final selection shall be in the sole discretion of the Board.

(c) *Ineligibility.* A community interest director shall cease to have the qualifications to be a community interest director if such director:

(1) Ceases to meet the definition of "community interest director" as set forth in § 931.15 of this chapter; or

(2) The organization which the community interest director serves:

(i) Ceases to represent consumer or community interests in banking services, credit needs, housing or financial consumer protections; or

(ii) Ceases to operate, is dissolved, or is declared insolvent.

4. Section 932.20 is amended by revising the introductory text and the column headings in the table to read as follows:

§ 932.20 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each state cannot be less than the number of directorships that were filled by the members from that state on December 31, 1960. The following list sets forth the number of elective directorships that were filled by members from each state on December 31, 1960:

Federal home loan bank—State	No. of elective directorships on December 31, 1960
.	.
.	.
.	.
.	.

5. Section 932.21 is revised to read as follows:

§ 932.21 Elective director eligibility. μ

(a) *Qualifications.* Each elective director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director;

(3) Be an officer or a director of a member whose principal place of business is in the state the elective director represents; and

(4) Comply with all requirements of the Act, and regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service.* No director who is elected pursuant to section 7 of the Act may, during such director's term of office, in the Board's discretion, serve as an elective director if such director:

(1) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than thirty (30) days past due; or

(2) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(c) *Prohibited acceptance of things of monetary value.* The prohibition on soliciting or accepting things of monetary value set forth in § 932.18(d) of this part also shall apply to elective directors during their term of office, except for such relationships with members (or subsidiaries or non-diversified holding companies thereof, or affiliates of such holding companies) the elective directors represent.

(d) *Minimum capital requirements.* (1) No person who is an officer or a director of any member of the Bank on whose board the person serves that fails to meet any applicable minimum regulatory capital requirements of the member's appropriate regulatory agency, is eligible to hold the office of Bank elective director during the calendar year in which the failure occurred, regardless of any exemption or exception to such capital requirements granted by the appropriate regulatory agency.

(2) A director who is ineligible pursuant to paragraph (d)(1) of this section is once again eligible for election in the succeeding calendar year, provided the member(s) that he or she serves as an officer or director meet(s) the applicable minimum regulatory capital requirements (which are not satisfied by the granting of any exemption or exception to such capital requirements by the appropriate regulatory agency), during each phase of the election process for the succeeding calendar year.

(e) *Ineligible director-elect.* A person declared elected pursuant to § 932.14(d) of this part will not be eligible to take office or serve as a director if, as of the date such person would otherwise assume the directorship, he or she does

not meet the eligibility requirements set forth in section 7 of the Act or this part.

(f) *Effect of ineligibility.* If an elective director shall cease to have any of the qualifications set forth in section 7 of the Act or this part, such directorship shall immediately become vacant and such person shall not continue to serve as a Bank director.

(g) *Certification and reporting.* (1) Prior to each election each director nominee for elective director shall certify, and annually thereafter by December 1 of each year each elective director shall certify, in writing to the Board on Form E-1 or E-2, as applicable, that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part.

(2) If an elective director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form E-2 within thirty (30) days of the event that caused or may have caused his or her ineligibility.

(3) Prior to each election each director nominee for elective director shall fully disclose, and annually thereafter by December 1 of each year and at any other time they arise each elective director shall fully disclose, in writing to the Board on Form E-1 or E-2, as applicable, any financial relationships, as defined in § 931.30 of this chapter, set forth in § 932.18(f)(3) of this part of such director nominee, elective director or company for which such director nominee or elective director serves as a director, partner or executive officer.

(4) Failure to make any certifications or disclosures required under this paragraph (g) shall render the director nominee or elective director ineligible under this part.

6. Section 932.22 is revised to read as follows:

§ 932.22 Vacancies in directorships.

(a) *Appointive director vacancy.* A vacancy in an appointive directorship shall be filled for the unexpired term through appointment by the Board as soon as practicable.

(b) *Elective director vacancy.* A vacancy in an elective directorship shall be filled for the unexpired term by an affirmative vote of a majority of the remaining Bank directors as soon as practicable, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. The Board shall declare elected such person selected by the Bank directors only if the person satisfies all applicable eligibility qualifications to serve as an elective director set forth in section 7 of

the Act and this part. Such vacancy shall be filled with a director from the state of the vacated director, unless there are no eligible candidates from such state, in which case the vacancy shall be filled by an eligible director from another state in the Bank's district.

7. Section 932.23 is added to read as follows:

§ 932.23 Certification and disclosure forms.

The following forms shall be completed and submitted to the Board pursuant to the requirements of §§ 932.18 (f) and (g) and 932.21(g) of this part:

- Form A-1—Appointive Director Candidates—Personal Certification and Disclosure Form (Required by § 932.18(f) (1) and (3) of this part)
- Form A-2—Appointive Directors—Personal Certification and Disclosure Form (Required by § 932.18(f) (1) through (3) and (g) of this part)
- Form E-1—Elective Director Nominees—Personal Certification and Disclosure Form (Required by § 932.21(g) (1) and (3) of this part)
- Form E-2—Elective Directors—Personal Certification and Disclosure Form (Required by § 932.21(g) (1) through (3) of this part)

By the Federal Housing Finance Board.

Dated: July 28, 1991.

J. Stephen Britt,

Executive Director.

[FR Doc. 91-18237 Filed 8-5-91; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-133-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require modification and testing of the landing gear hydraulic selector valve. This proposal is prompted by recent reports of friction in the selector valve plunger, requiring increased effort by the flight crew to select the landing gear down. This condition, if not

corrected, could result in a gear-up landing.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-133-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-133-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There have been recent reports of friction in the selector valve plunger, requiring increased effort by the flight crew to select the landing gear down. This condition, if not corrected, could result in a gear-up landing.

British Aerospace has issued Service Bulletin ATP-29-6, dated April 12, 1991, which references AP Precision Hydraulics Service Bulletin AIR44880-29-01, dated April 1991, and describes procedures for modification of the landing gear hydraulic selector valve. The modification consists of lowering the tightening torque of the gland bearing, chamfering the body bore to prevent burrs being formed, opening out the hole in the end plate to prevent plunger foul, and tightening the torque on the fluid adapters to prevent leakage. The AP Precision Hydraulics service bulletin also describes procedures to test the selector valve. The United Kingdom CAA has classified the AP Precision Hydraulics service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification and testing of the landing gear hydraulic selector valve in accordance with the service bulletins previously described.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,980.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket No. 91-NM-133-AD.

Applicability: Model ATP series airplanes, equipped with hydraulic selector valves part number AIR44880 and AIR44882, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent a gear-up landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify and test the landing gear hydraulic selector valves in accordance with AP Precision Hydraulics Service Bulletin AIR44880-29-01, dated April 1991.

Note: British Aerospace Service Bulletin ATP-29-6, dated April 12, 1991, references AP Precision Hydraulics Service Bulletin AIR44880-29-01, dated April 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and

then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18559 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-130-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) series airplanes, which currently requires replacement of a certain lap belt at the forward cabin attendant double seat. That action was prompted by a report that the outboard attendant lap seat belt connection half can inadvertently be thrown into the lower hinge of the passenger entrance door and obstruct opening of the door. This condition, if not corrected, could result in delayed evacuation of passengers in an emergency situation. This proposed action would require inspection of the outboard lap belt assembly at the forward cabin attendant seat installed on additional airplanes, and replacement of the lap belt if it can obstruct the opening of the passenger entrance door.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest

Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-130-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1171, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Walter Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-130-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 29, 1990, the FAA issued AD 90-15-02, Amendment 39-6651 (55 FR

28183, July 10, 1990), to require replacement of a certain lap belt at the forward cabin attendant double seat on certain Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) series airplanes. That action was prompted by a report indicating that the outboard attendant seat lap belt connection half can inadvertently be thrown into the lower hinge of the passenger entrance door and obstruct opening of the door. This condition, if not corrected, could result in delayed evacuation of passengers in an emergency situation.

AD 90-15-02 is applicable only to those airplanes listed in McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990. The airplanes listed in that service bulletin had the subject lap belt assemblies installed in them originally by McDonnell Douglas prior to delivery. However, since issuance of AD 90-15-02, a report has been received which indicated that operators of certain other Model DC-9 series airplanes not listed in the service bulletin may have installed the subject lap belt assemblies after delivery; therefore, these airplanes may be subject to the same unsafe condition addressed in AD 90-15-02. The FAA has determined that it is necessary to inspect all airplanes in the series to determine if the subject lap belt assemblies are installed and, where necessary, to replace the lap belt in order to eliminate the interference with the opening of the passenger door.

The FAA has reviewed and approved McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990, which describes procedures for the replacement of a certain lap belt at the forward cabin attendant double seat.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90-15-02 with a new airworthiness directive that would require inspection of the outboard lap belt assembly at the forward cabin attendant seat on all Model DC-9 series airplanes, and replacement of the lap belt if it obstructs opening the passenger entrance door.

There are approximately 1,793 Model DC-9 series, DC-9-80 series, MD-88, and C-9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 1,085 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.6 manhour per airplane to accomplish the required actions, and that the average labor cost would be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is

estimated to be \$35,805. Where seat belt interference is discovered, an additional \$80 per airplane would be required for the cost of the replacement belt.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6651 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No 91-NM-130-AD. Supersedes AD 90-15-02.

Applicability: All Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the lap belt connector or buckle from jamming the passenger entrance door hinge, accomplish the following:

(a) For airplanes listed in McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990: Within six months

after August 14, 1990 (the effective date of AD 90-15-02, Amendment 39-6651), modify the forward cabin attendant dual seat, outboard position, lap belt restraint system, in accordance with the Accomplishment Instructions, Paragraph 2, of McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990.

(b) For airplanes not listed in McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990, and having dual forward cabin attendant seats incorporating a restraint system with lap belts independent of the shoulder harness: Within six months after the effective date of this AD, inspect the outboard attendant seat lap belt to determine if the connector or buckle is capable of reaching and interfering with the lower hinge of the passenger entrance door and obstructing the opening of the door.

(1) If opening of the passenger entrance door is obstructed, prior to further flight, modify the installation so that a shorter lap belt half is utilized, in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If opening of the passenger entrance door is not obstructed, no further action is necessary.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: A previously-approved alternative method of compliance with AD 90-15-02 is considered to be an approved alternative method of compliance with this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801; Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1-L5B (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18561 Filed 8-5-91; 8:45 am]

BILLING CODE 4210-13-M

14 CFR Part 39

[Docket No. 91-NM-132-AD]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which would require a one-time inspection and measurement of certain latches on the nacelle forward cowling doors to determine if the latch triggers are within certain specified limits, and the installation of new latch triggers, if necessary. This proposal is prompted by reports that the latch triggers on the nacelle forward cowling doors had been trimmed to make the latch fit the form of the cowling surface, which could cause abnormal abrasion on the triggers and subsequent unlocking of the latches. This condition, if not corrected, could result in the cowling doors opening during flight.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-132-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified

above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-132-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes. There have been recent reports that the latch triggers, manufactured by Avibank, located on the nacelle forward cowl doors have been trimmed to make the latch fit the form of the cowl surface. This could cause abnormal abrasion on the latch triggers and subsequent unlocking of the latches. This condition, if not corrected, could result in the cowl doors opening during flight.

SAAB-Scania has issued Service Bulletin 340-71-035, Revision 1, dated December 18, 1990, which describes procedures for a one-time inspection and measurement of the Avibank latches on the nacelle forward cowl doors to determine if the latch triggers are within specified limits, and the installation of new latch triggers, if necessary. The LFV has classified this service bulletin as mandatory, and has issued Swedish Airworthiness Directive 1-042 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which

would require a one-time inspection and measurement of the Avibank latches on the nacelle forward cowl doors to determine if the latch triggers are within specified limits, and the installation of new latch triggers, if necessary, in accordance with the service bulletin previously described.

It is estimated that 108 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$11,880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab-Scania: Docket No. 91-NM-132-AD.

Applicability: Model SF-340A series airplanes, Serial Numbers 004 through 159; and Model SAAB 340B series airplanes, Serial Numbers 160 through 200; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the cowl doors from opening during flight, accomplish the following:

(a) Within 90 days after the effective date of this AD, inspect and measure the Avibank latches on the nacelle forward cowl doors 7271110-501/601, in accordance with SAAB Service Bulletin 340-71-035, Revision 1, dated December 18, 1990.

(1) If the measurement is within the limits specified in Figure 2 of the service bulletin, no further action is required.

(2) If the measurement is outside the limits specified in Figure 2 of the service bulletin, prior to further flight, install new latch triggers in accordance with paragraph 2.C. of the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18560 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 910764-1164]

RIN 0651-AA64

Duty of Disclosure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend the

rules of practice in patent cases to (1) clarify the duty of disclosure for information required to be submitted to the Office; (2) provide flexible time limits for submitting information disclosure statements including the requirement for a fee in certain cases; (3) eliminate consideration of duty of disclosure issues by the Office except in disciplinary proceedings, and under other limited circumstances; and (4) eliminate the striking of patent applications which are improperly executed. The Office further proposes to amend the Patent and Trademark Office Code of Professional Responsibility to define acts of misconduct which conform to a failure to comply with the proposed rules on duty of disclosure.

The proposed rules attempt to strike a balance between the need of the Office to obtain and consider all known relevant information pertaining to patentability before a patent is granted and the desire to avoid or minimize unnecessary complications in the enforcement of patents. The proposed rules are intended to (1) specify more precisely the information which those associated with the filing and prosecution of patent applications have a duty to disclose to the Office; (2) minimize the risk that valuable patent rights will be lost by providing more flexible procedures and time limits for submitting information to the Office in pending patent applications; (3) insure that information material to patentability timely submitted to the Office is considered by the examiner before a patent is granted; and (4) permit some of the Office resources previously devoted to consideration of duty of disclosure issues to be directed to other Office priorities.

DATES: Comments must be submitted on or before October 8, 1991. A public hearing will be held on October 8, 1991, beginning at 9:30 a.m. Requests to present oral testimony should be received on or before October 7, 1991.

ADDRESSES: Address written comments and requests to present oral testimony to Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Charles E. Van Horn (Crystal Park 2—room 919). The hearing will be held at the Patent and Trademark Office in room 912 of Crystal Park Building 2 located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in room 919 of Crystal Park Building 2.

FOR FURTHER INFORMATION CONTACT: By telephone Charles E. Van Horn (703-557-3054) or J. Michael Thesz (703-557-

8384) or by mail addressed to Commissioner of Patents and Trademarks, Washington, DC 20231, and marked to the attention of Charles E. Van Horn (Crystal Park 2—room 919).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking published in the Federal Register at 54 FR 11334 (March 17, 1989), and in the Patent and Trademark Office Official Gazette at 1101 Off. Gaz. Pat. Office 12 (April 4, 1989), is hereby withdrawn. The rules proposed herein are significantly different from those contained in the notice of proposed rulemaking of March 17, 1989.

The purpose of the rules relating to duty of disclosure is to advise individuals of the scope of that duty and to assist the Office in conducting effective and efficient ex parte examination of patent applications and to issue valid patents. The rules are directed to those individuals who are substantively involved in the preparation or prosecution of the patent application.

The proposed rules emphasize that the public interest is best served and the Office is most effective in granting valid patents when, at the time the patent application is examined, the Office is aware of and evaluates all information material to patentability. The primary concern of the Office is that relevant information be considered by the examiner before a patent is granted, not on how that information comes to the attention of the examiner. The public, the Office and the users of the patent system also have an interest in an efficient examination process. Accordingly, the proposed rules place some practical time limits on the submission of information to the Office, without foreclosing the opportunity to have any information considered by the Office in a particular application, or in a continuing application, before a patent is granted.

The Office proposes to modify § 1.56 to more clearly define for individuals associated with the filing and prosecution of a patent application the duty to cite to the Office all information known to them to be material to patentability. The duty contemplated by proposed § 1.56 requires both knowledge of the information and knowledge of its materiality. The duty would exist with respect to the subject matter of claims for which a patent is sought, and would not exist for the subject matter of claims which is no longer under consideration. Proposed § 1.56 specifies that there is no need to cite information material to patentability of a cancelled claim or a

claim withdrawn from consideration is the information is not material to the patentability of any claim remaining under consideration in the application.

Proposed § 1.56 would emphasize that the interests of the Office and the patent system are served when information that is material to the patentability of claims that issue in a patent is considered by the Office before a patent is granted. Specifically, proposed § 1.56 specifies that the requirements of the section would be satisfied if all information known to be material to the patentability of all allowed claims was either cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98 prior to the issuance of the patent. The duty of disclosure as defined in proposed § 1.56 would not be violated simply because the examiner cited a reference before it was submitted to the Office by an individual subject to the duty.

Proposed § 1.56(b) presents a clearer and more objective definition of information material to patentability. The current definition, based on what would be important to a reasonable examiner in deciding whether to allow the application to issue as a patent, has been criticized as vague and because it does not correlate with any concept applied in other areas of the patent law. The revised definition is framed in terms of alternative objective criteria that emphasize the direct connection between the disclosure standard and the examination process.

Under proposed § 1.97, individuals who are working diligently in a cooperative effort with the Office to bring material information to the attention of the examiner promptly after its discovery are able to file such information and have it considered by the examiner until the point in the pendency of the application where the issue fee is paid. For those individuals that do not certify that the information was recently discovered as defined in proposed § 1.97(e), the opportunities to have information considered by the examiner during the examination of a particular application are more limited. Even where no certification is made, however, the opportunity is available for such individuals to timely file a continuing application of the particular application to have such information considered.

The Office encourages prompt filing of information disclosure statements, yet is willing to provide more flexibility for patent applications within certain limits. Recent surveys of 1719 recently issued patent files indicated that 856 (50%) contained a total of 933 information

disclosure statements. Where statements were filed in an application, 691 (74%) were filed before the first Office action, 874 (94%) were filed before the final rejection or notice of allowance, whichever occurred first, and 923 (99%) were filed before payment of the issue fee. If there is a substantial shift in the filing of information disclosure statements to a later point in time in the examination process, the efficiency and cost of that process and average pendency of applications will be adversely affected.

The Office proposes to amend its rules to reflect current practice of no longer investigating violations of duty of disclosure except under very limited circumstances or with respect to a charge of misconduct under 37 CFR part 10. Similarly, the Office generally will not comment on duty of disclosure issues, but reserves its inherent authority to reject an application under appropriate circumstances where fraud or other inequitable conduct has occurred. The Office would exercise its authority in ex parte examination only in the most egregious and clear cases, e.g., where there is a final court decision that inequitable conduct has occurred. The Office will not consider, evaluate, or decide fraud or other inequitable conduct issues during an interference proceeding under 35 U.S.C. 135(a). Specifically, a motion for judgment based on inequitable conduct would no longer be authorized under 37 CFR 1.633(a). However, practitioners found to have participated in fraud or other inequitable conduct would remain subject to disciplinary proceedings. 37 CFR part 10.

Examination for the lack of deceptive intent in reissue applications will continue (35 U.S.C. 251), but without any independent investigation of inequitable conduct issues. The reissue applicant's statement of lack of deceptive intent generally will be accepted as dispositive except in special circumstances, such as a judicial determination of fraud or inequitable conduct or an admission of facts which would conclusively establish fraud or inequitable conduct without any investigation. In those cases, the claims will be rejected under 35 U.S.C. 251 for failing to satisfy the statutory requirement of a lack of "deceptive intent." See *In re Clark*, 522 F.2d 623, 187 USPQ 209 (CCPA 1975). Accordingly, reissue is not available to cure or otherwise purge inequitable conduct in obtaining a patent.

The proposed rules would substantially conform the rules to the policies announced in the Official Gazette: "Patent and Trademark Office

Implementation of 37 CFR 1.56," 1095 Off. Gaz. Pat. Office 16 (October 11, 1988), "Further Clarification on Patent and Trademark Office Implementation of 37 CFR 1.56," 1096 Off. Gaz. Pat. Office 19 (November 8, 1988), and "Patent and Trademark Office Implementation of 37 CFR 1.28(d) and 1.56 (c), (f) and (g)," 1098 Off. Gaz. Pat. Office 502 (January 3, 1989) regarding consideration of fraud or other inequitable conduct issues in the Office.

Discussion of Specific Rule Change Proposals

Section 1.17, if amended as proposed, would amend paragraph (i)(1) to include a reference to the petition required in proposed § 1.97(d) and would add a fee for submission of an information disclosure statement under proposed § 1.97(c) in the amount of \$200.00. The added fee would be due upon filing each information disclosure statement in certain cases under the conditions set forth in proposed § 1.97(c). That is, if the statement is filed after the first Office action and is not accompanied by a certification (proposed § 1.97(e)) that the information was found within the preceding three months, the statement will not be considered by the examiner unless and until the fee in proposed § 1.17(p) is paid. The proposed fee is being charged to cover a new service as well as to compensate the Office for the extra work caused by the examiner who may have to redo part of all of the examination because of information which is not brought to the attention of the Office promptly.

Section 1.28(d)(2) is proposed to be amended to remove the references to § 1.56(d) and to § 1.555. Proposed § 1.28(d)(2) retains the reference to fraud practiced or attempted on the Office, but removes any reference to sections which currently provide for rejections based on fraud. Further, the reference to "gross negligence" is proposed to be replaced by reference to "intent to deceive" to reflect binding precedent of the U.S. Court of Appeals for the Federal Circuit. See, e.g., *Kingsdown Medical Consultants, Ltd. v. Hollister, Inc.*, 863 F.2d 867, 9 USPQ 2d 1384 (Fed. Cir. 1988) (*en banc*).

Section 1.51(b), if amended as proposed, would delete the reference to § 1.99 which is proposed to be removed.

Section 1.52(c), if amended as proposed, would delete the reference to § 1.56(c) which dealt with the striking of applications which are improperly executed. The Office no longer would strike such applications. Section 1.52(c) would be revised to indicate that no alteration to application papers should take place after signing any

accompanying oath or declaration under § 1.63. Application papers containing alterations made after an oath or declaration is signed must be supported by a supplemental oath or declaration under proposed § 1.67(c).

Section 1.56 is proposed to be revised to provide a more objective definition of information material to patentability. It would also delete the provisions that were followed when the Office was conducting investigations of fraud or other inequitable conduct during the examination of patent applications.

Section 1.56(a), as proposed, sets forth some of the reasons which the Office considers important for insisting on candor and good faith on the part of individuals associated with the filing and prosecution of a patent application. A patent is affected with a public interest. *Precision Instrument Mfg. Co. v. Automatic Maintenance Machinery Co.*, 324 U.S. 806, 816 (1945). Patent examination by the Office, an ex parte proceeding, is most effective when the Office is aware of and evaluates the teachings of all information material to patentability before a patent is granted. The duty of candor and good faith in the conduct of business before the Office includes a duty to disclose to the Office information material to patentability. The duty to disclose information attaches where an individual defined in proposed § 1.56(c) has both knowledge of the information and of its materiality to the patentability of a pending claim.

Proposed § 1.56(a) also sets forth further boundaries of the duty of disclosure to further prescribe the information in which the Office has an interest. Thus, the duty to disclose information cannot exist with respect to the subject matter of a claim that is no longer under consideration in an application unless the information is material to some other pending claim that remains under consideration in the application. Further, the statement that there is no duty to submit information which is not material to the patentability of any existing claim is retained from the present rule. It would be sufficient to satisfy all requirements of proposed § 1.56 if all information known to be material to patentability, as defined in § 1.56(b), as to all allowed claims is cited by the examiner or submitted to the Office in a manner that requires consideration by the Office prior to the grant of the patent.

Finally, under proposed § 1.56(a), the Office encourages individuals to carefully examine (1) prior art cited in search reports of a foreign patent office in a counterpart patent application and (2) the closest information over which

individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any information material to patentability contained therein is disclosed to the Office. Consideration of all material information, prior to the issuance of a patent, will minimize the chance that the Office will issue an invalid patent, and will reduce the need for expensive patent litigation. Any risk of non-compliance with the provisions of proposed § 1.56(a) can be avoided by submitting the information to the Office in accordance with proposed §§ 1.97(b)-(d) and 1.98.

Proposed § 1.56(b) defines information which is material to patentability. The definition would ensure that the most pertinent information is considered during examination by the Office. Information is not material when it is cumulative to information already of record in the application, i.e., it shows or teaches the same subject matter as shown or taught by information already of record.

Under proposed § 1.56(b)(1), information is material where it creates, either by itself or in combination with other information, a *prima facie* case of unpatentability of a claim pending before the Office. A *prima facie* case is established during *ex parte* examination when the prior art or other information compels a conclusion that a claim is unpatentable, under the preponderance of evidence, burden of proof standard, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability. The clear and convincing burden of proof and claim construction standards applied by the courts in infringement cases would not be applied to a determination of whether information is material. During *ex parte* examination before the Office, and unlike infringement cases, claims are given their broadest reasonable interpretation consistent with the specification. For example, if the information establishes that the subject matter of at least one claim is anticipated under 35 U.S.C. 102, or *prima facie* would have been obvious to a person of ordinary skill in the art under 35 U.S.C. 103, or *prima facie* is not supported by an enabling disclosure under the first paragraph of 35 U.S.C. 112, it must be cited under proposed § 1.56(b)(1).

A *prima facie* case of unpatentability is subject to being rebutted by other information or arguments which may be submitted in the application. However, an individual would have a duty to

submit the information which creates a *prima facie* case of unpatentability and may submit the rebuttal information to the Office so that the examiner can make an informed determination on patentability. Thus, if an individual knows of a document which establishes a *prima facie* case of unpatentability, but also knows of antedating evidence which would tend to show that the invention was made before the effective date of the document, the document would be material to patentability and should be submitted to the Office. Applicant could also submit any evidence of prior invention (37 CFR 1.131) so that the examiner could determine whether the evidence was sufficient to remove the document as a reference. If an individual knows of a document which establishes a *prima facie* case of unpatentability, but also knows of test results which would tend to show that the invention produces unexpected results, the document would be material to patentability and should be submitted to the Office. Applicant could also submit any evidence of unexpected results (37 CFR 1.132) so that the examiner could determine whether the document, when considered with the evidence, renders the claimed subject matter obvious or non-obvious.

Proposed § 1.56(b)(2) further defines as material information which supports a position of unpatentability taken by the Office which applicant disputes, or is inconsistent with a position in support of patentability on which the applicant has relied. The information defined in § 1.56(b)(2) would either provide non-cumulative support for a rejection made by the examiner, or be inconsistent with a position in support of patentability on which applicant has relied whether or not the position was taken in response to a rejection of a claim made by the examiner. The Office has selected the phrase "inconsistent with" rather than a term such as "refutes" because the Office, not the applicant, should make the determination of the relative value and weight to be accorded information that is inconsistent with a position of patentability relied on by applicant.

For example, there could be a case where four tests are conducted, with three tests producing results which support applicant's argument for patentability, but the fourth test producing a result which contradicts the other three. Ultimately, it might be decided by applicant that the fourth test was not valid. Paragraph (b)(2) of proposed § 1.56 would require disclosure of the results of the fourth test to the Office so that the examiner could weigh the probative value of all

the tests. An explanation of why the fourth test is believed invalid by the applicant could also be submitted.

Proposed § 1.56(c) retains the definition of individuals who are subject to the duty of disclosure. Also retained in proposed § 1.56(d) is the assurance that individuals that do not normally communicate directly with the Office can comply with the duty of disclosure by disclosing the information to those that do.

Section 1.56 is proposed to be amended by eliminating the provisions of current paragraphs (b)-(f) which are inconsistent with the intention of the Office to no longer investigate issues of fraud and inequitable conduct except under unique circumstances, and to no longer strike an application for improper execution.

Specifically, the provisions of current § 1.56(b) are either restated in the provisions of proposed § 1.56, or replaced by the provisions of proposed § 1.98 relating to the content requirements of an information disclosure statement. The provisions of §§ 1.56 (c), (f), and (g) are proposed to be eliminated because the Office will no longer strike an application for improper execution. Under current rules, an application may be filed in the Office pursuant to § 1.53(d) without an oath or declaration. Further, if there was a defect in executing a patent application, such as listed in § 1.56(c), the defect could be corrected by filing a supplemental oath or declaration pursuant to proposed § 1.67(c). Accordingly, the Office will not consider striking an application for these defects under the proposed rules and will not consider a petition directed to such matters. However, the conduct of any practitioner knowingly permitting a material alteration of the application papers after the oath or declaration has been signed, which is prohibited by § 1.52(c), is not condoned by the Office and remains subject to disciplinary proceedings. See proposed § 10.23(c)(11).

Similarly, since the Office generally will not be investigating or examining duty of disclosure issues which are brought to its attention in original or reissue applications except in limited circumstances, the provisions of §§ 1.56 (d), (e), (h), and (i) are proposed to be deleted. The Office also proposes to continue its policy of not considering fraud or other inequitable conduct issues in interference proceedings under 35 U.S.C. 135. While the Office ordinarily will not investigate fraud or other inequitable conduct in connection with the *ex parte* examination of a patent application, the public should be

aware that the Commissioner has inherent authority to, and may under limited circumstances, reject an application when such conduct has occurred.

The provision in § 1.56(j) that a time period would be set by the Office for the applicant to provide copies of documents omitted from an information disclosure statement is to be deleted. Under proposed § 1.97(f), additional time may be provided under limited circumstances in order to complete an information disclosure statement.

Section 1.63, if amended as proposed, would amend paragraphs (b)(3) and (d) to require an oath or declaration submitted as part of an application to include an acknowledgment of the duty to disclose all known information material to patentability as defined in proposed § 1.56 to the Office. These amendments would delete reference to paragraph (a) in § 1.56, and make reference to all of § 1.56 including its definitional paragraphs.

Section 1.67, if amended as proposed, would add new paragraph (c) requiring that a new oath or declaration be filed if the application was altered after the oath or declaration was signed or if a prior oath or declaration contained any of the defects previously listed in § 1.56(c). The new oath or declaration either may be required by the Office or may be filed voluntarily by the applicant and could also be filed to eliminate questions about the execution of the originally filed oath or declaration.

Section 1.97, as proposed, does not require that an information disclosure statement be filed in each application, but rather sets forth the circumstances and conditions under which the Office would consider information brought to its attention by applicant. The proposed rule differs from current practice which only encourages the filing of an information disclosure statement within a short period of time after the application is filed. By considering statements filed within the times specified, the Office seeks to promote the efficiency of the examination process, to insure consideration of information relevant to patentability, and to help avoid duty of disclosure issues.

Paragraph (a) of proposed § 1.97 provides that information disclosure statements should comply with both proposed § 1.97 and § 1.98 in order to have information considered by the Office during the pendency of an application. Information which is material to patentability, as defined in proposed § 1.56(b), or other information which applicant desires the Office to consider would be considered if the

information disclosure statement complied with the provisions of both §§ 1.97 and 1.98. Multiple information disclosure statements may be filed in a single application, and they will be considered, provided they are in compliance with the appropriate requirements.

Paragraph (b) of proposed § 1.97 sets forth the requirements that must be met for consideration of information contained in an information disclosure statement by the Office without the certification of proposed paragraph (e) of the fee set forth in proposed § 1.17(p). In order to insure consideration by the Office, the information must be brought to the attention of the examiner in the form required by proposed § 1.98. An information disclosure statement would be considered without certification or payment of a fee if filed before any of the points in time set forth in proposed paragraph (b). These points in time relate to each new application, whether it is an original application or some type of continuing application, i.e., continuation, continuation-in-part or divisional application. As noted in the recent survey reported above, a substantial majority of the information disclosure statements are filed before first Office action in an application. The Office wishes to continue to encourage early submission of information disclosure statements since it promotes the efficiency of the *ex parte* examination process.

Under proposed § 1.97(b), all information disclosure statements that were filed in accordance with proposed § 1.98 and were filed within three months of the filing date would be considered by the examiner, regardless of whatever else had occurred in the examination process up to that point in time. Thus, in the rare instance that a final Office action or a notice of allowance had been mailed prior to a date which is three months from the filing date, any information contained in a complete information disclosure statement filed within that three-month window would be considered by the examiner. Likewise, an information disclosure statement would be considered if it was filed later than three months after the filing date but before the mailing date of a first Office action on the merits. An action on the merits means an action which treats the patentability of the claims in an application, as opposed to only formal or procedural requirements. An action on the merits would, for example, contain a rejection or indication of allowability of a claim or claims rather than just a restriction requirement (§ 1.142) or just a requirement for

additional fees to have a claim considered (§ 1.16(d)).

For the purposes proposed in § 1.97, the information disclosure statement will be considered to have been filed on the day it was received in the Office, or on an earlier date of mailing if accompanied by a properly executed certificate of mailing under § 1.8, or Express Mail certificate under § 1.10.

Paragraph (c) of proposed § 1.97 sets forth the requirements for an information disclosure statement to be considered if it was filed after the points in time described in paragraph (b) but before the date of mailing of either a final action under § 1.113 or a notice of allowance under § 1.311, whichever occurs earlier. The late submission fee set forth in proposed § 1.17(p) would have to be filed with the information disclosure statement unless the certification as specified in proposed paragraph (e) was filed. The purpose of the fee is to compensate the Office for the extra work caused the examiner who may have to redo part or all of the examination because of the late submission. The added cost of considering new information in an application at an advanced stage in the examination process would be borne only by those applicants do not certify that information is being brought to the attention of the Office within the time periods specified.

Where the information is submitted under proposed § 1.97(c) with a fee, an examiner would be able to use any information cited in such a submission and make the next Office action final.

Paragraph (d) of proposed § 1.97 sets forth the requirements for an information disclosure statement to be considered if filed after the mailing date of either a final action under § 1.113 or a notice of allowance under § 1.311, whichever occurs earlier, but before payment of the issue fee. In order to insure consideration, the information disclosure statement would be required to be accompanied by a certification as specified in proposed paragraph (e) and a petition requesting consideration of the information disclosure statement. The proper petition fee under § 1.17(i)(1) would also be required. These requirements are appropriate in view of the late stage of prosecution when the information is being submitted, i.e., after the examiner has reached a final determination on the patentability of the claims presented for examination.

The proposed requirements provide for consideration by the Office of information which is submitted within a reasonable time, i.e., within 3 months after an individual designated in

proposed § 1.56(c) becomes aware of the information. This undertaking by the Office to consider information would be available throughout the pendency of the application until the point where the patent issue fee was paid. If an applicant chose not to comply, or could not comply, with proposed § 1.97(d), a continuing application could be filed to have the information considered by the examiner. The parent application could be permitted to become abandoned by not paying the issue fee required in the Notice of Allowance, for example, or by the filing of a file wrapper continuing application under § 1.62. Where the issue fee had already been paid, the parent application could be withdrawn from issue and abandoned pursuant to proposed § 1.313(b)(5). If an application has been withdrawn from issue under one of the provisions of §§ 1.313(b) (1)-(4), it will be treated as though the issue fee had not yet been paid with regard to § 1.97.

Paragraph (e) of proposed § 1.97 sets forth the requirements of a certification that could be submitted in place of the late submission fee set forth in § 1.17(p) or to obtain consideration of an information disclosure statement up to payment of the issue fee. The certification would be required to state that no item of information contained in the information disclosure statement in question was cited in a communication from a foreign patent office in a counterpart foreign application more than three months prior to the filing of the statement, or was known to any individual designated in § 1.56(c) more than three months prior to the filing of the statement. The date on the action by the foreign patent office begins the three-month period in the same manner as the mailing of an Office action starts a three-month shortened statutory period for response. Likewise, the statement will be considered to have been filed on the date the statement was received in the Office, or on an earlier date of mailing if accompanied by a properly executed certificate of mailing under § 1.8, or Express Mail certificate under § 1.10.

The term *counterpart foreign patent application* means that a claim for priority has been made in either the U.S. application or a foreign application based on the other, or that the disclosures of the U.S. and foreign patent application are substantively identical (e.g., an application filed in the European Patent Office claiming the same U.K. priority as claimed in the U.S. application).

The certification should be made by a person in a position to know the facts

certified. Certification need not be in the form of an oath or declaration under § 1.68. Certification by a registered practitioner or any other individual that the statement was filed within the three-month period of either first citation by a foreign patent office or first discovery of the information will be accepted as dispositive of compliance with this provision in the absence of evidence to the contrary. The time at which information "was known to any individual designated in § 1.55(c)" is the time when the information was discovered even if awareness of the materiality came later. The Office wishes to encourage prompt evaluation of the relevance of information and to have a date certain for determining if a certification can properly be made. A statement on information and belief normally would not be sufficient. Although it is recognized that an individual actually becomes aware of the information in the communication from the foreign patent office sometime after it was mailed, the mailing date of such a communication, if it occurs prior to the first awareness of the same information, would determine the date for filing of an information disclosure statement without a fee. The Office is willing to absorb any additional cost in considering such information relevant to patentability after the time set in proposed paragraph (b) only when it is clear that an applicant is diligent in providing the information to the Office.

Paragraph (f) of proposed § 1.97 sets forth that the time periods for filing a statement are not subject to an extension of time under § 1.136. However, the examiner has discretion to set an additional time period to permit an applicant to comply with any requirements of § 1.98 which were inadvertently omitted. The concept proposed in paragraph (f) is the same as that applied under § 1.135(c).

Paragraph (g) of proposed § 1.97 continues the present policy that the filing of an information disclosure statement would not be construed as a representation that a patentability search was made. There is no requirement that an applicant for a patent make a patentability search.

Paragraph (h) of proposed § 1.97 states that information disclosure statements which do not comply with this section will not be considered by the Office but will be placed in the application file if filed before a patent is granted on the application. Information submitted after the grant of a patent must comply with § 1.501.

The provisions of proposed § 1.97 are summarized in the following chart:

SECTION 1.97 REQUIREMENTS FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENTS (IDS)

Time when IDS is filed	§ 1.97 Requirements
(1) Within 3 months of filing or before first Office action on merits (§ 1.97(b)).	None (always considered).
(2) After (1) but before final action or notice of allowance (§ 1.97(c)).	Certification or § 1.17(p) fee.
(3) After final action or notice of allowance and before payment of issue fee (§ 1.97(d)).	Certification, petition, and petition fee.

The administrative details of supplying information to the Office are defined in proposed § 1.98. These details are substantially unchanged from current practice, but the format and wording have been modified to provide greater clarity. Under proposed § 1.98(a)(1), the information disclosure statement must include a list of all the information disclosed. The list will permit the printing contractor to identify the documents to be printed on the patent without unnecessary duplication of effort by the Office. Individuals submitting an information disclosure statement are encouraged to use form PTO-1449, "Information Disclosure Citation", for such a list.

Under proposed § 1.98(a)(2), a legible copy of each item of information listed is required. However, copies of U.S. patent applications cited in the information disclosure statement are not required to be submitted to the Office because the applications are readily accessible to the examiner, copies would add unnecessary bulk to the file, and the presence of copies might result in the unnecessary disclosure of the contents of such patent applications when the application in which it was cited matures into a patent.

Under proposed § 1.98(a)(3), the information disclosure statement must include a concise explanation of the relevance of each item of information listed, and may further contain an explanation of why the claimed invention should be considered patentable over the item of information. These explanations may be contained in the specification or be submitted in a page separate from the specification. In either case, however, a list and a copy of each document for inclusion in the file record is required in order to satisfy the requirements of § 1.98(a). If information is being submitted from a foreign search report, the requirement for a concise explanation may be satisfied by submitting an English-language version of the search report.

Proposed § 1.98(b) continues the present practice and policy regarding the identifying information to be listed for each document cited in an information disclosure statement. Listing of the patentees or authors in a patent or publication may be limited to the last name of the first listed inventor or author followed by "et al."

Proposed § 1.98(c) continues the present practice and policy relative to citing and supplying information which is cumulative and relative to supplying a translation of information that is not in the English language. Under this proposed section, if two or more patents or publications are cumulative in terms of their contents relative to the patentability of the claims, the submission need be accompanied by only a copy of one of the documents containing the information, provided that a statement is made that the other documents are cumulative.

In addition, an English language translation of a non-English language document or the relevant portion thereof need only be submitted when it is in the possession, custody or control of, or is readily available to any individual designated in proposed § 1.56(c). This does not mean that such an individual must purchase a translation in each case, even though a translating service may be readily available. But if the individual has the ability to translate the non-English language into English and has done so for the purposes of reviewing the information relative to the claimed invention, the translation would be considered "readily available."

Finally, proposed § 1.98(d) would relieve applicant of the burden of supplying a copy of any document that is cited in an information disclosure statement complying with § 1.98 that had been submitted to the Office by the applicant in a prior application, where that prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120. The relevance of the information need be explained only if it differs from the relevance as explained in the prior application. The provisions of proposed § 1.98(d) do not relieve applicants desiring to have information considered of the requirements to file an information disclosure statement in each continuing application, or of the responsibility to furnish a list in each application where the information is to be considered and a concise explanation of the relevance of any document if it differs from the explanation of relevance provided in the prior application. No additional copy of the document will normally be required in

the continuing application if a copy was submitted in the prior application.

Section 1.99 is proposed to be removed and reserved since the filing of supplemental information disclosure statements is covered by the procedures set forth in proposed § 1.97.

Section 1.175(a)(7), if amended as proposed, would be changed so that the acknowledgment required to be made in a reissue oath or declaration would be consistent with the language of proposed § 1.56.

Section 1.193(c) is proposed to be deleted and reserved. The proposed deletion reflects the general intention of the Office not to investigate fraud or other inequitable conduct in connection with the examination of a patent application.

Section 1.291(a) is proposed to be revised to indicate that protests which raise fraud or other inequitable conduct issues will be entered in the application file generally without comment on those issues. Again, this reflects the general policy of the Office not to investigate these issues in the examination of an application. Further, protests which do not adequately identify a pending application to permit matching of the protest with an application will be disposed of because the Office cannot act on such protests.

Section 1.291(c) is proposed to be amended to provide that the return of a return-addressed postcard which the protestor may include with the protest will be the only acknowledgment of the filing of a protest in either a reissue or regular application. The distinction made in current § 1.291(c) between reissue and regular applications has served no useful purpose. Although applicant will receive a copy of the protest filed in the application, the Office may not communicate with the applicant regarding the protest as where it does not contain information which is material to the patentability of the application. While the Office may require applicant to respond to specific questions raised by the protest, the Office generally will not investigate allegations with regard to fraud or other inequitable conduct. According to the proposed revision of § 1.291(c), in the absence of a request from the Office, an applicant has no duty to, and need not, respond to a protest. The last sentence in § 1.291(c) is proposed to be amended to reflect that the protestor has no active participation in the examination of an application. The protestor's involvement is limited to the filing of a protest which would be acknowledged by the return of a return-addressed postcard or similar administrative act. It is also proposed to

eliminate the term "acknowledged" in the last sentence of § 1.291(c) since the Office will always acknowledge receipt of a document when accompanied by a return-addressed postcard. Finally, it is proposed to delete the phrase "and thereby constitutes a new protest" as superfluous.

Section 1.313(b) is proposed to be revised to indicate that the provisions of this section are applicable as of the date the issue fee has been paid. The purpose of this amendment is to provide a clear line to both the public and the Office for when the provisions of § 1.313(b) become operative. Since the public is not aware of when the patent to be issued receives its issue date and patent number, an event that typically takes place within two or three weeks after the issue fee has been paid, the proposed amendment is made to provide greater clarity and certainty for the patent applicant to judge what type of action can be taken.

In addition, § 1.313(b) is proposed to be amended to add one additional reason for withdrawing an application from issue after the issue fee has been paid. In proposed paragraph (b)(5), an application could be withdrawn from issue after the issue fee has been paid upon a request by the applicant to have information considered in a continuing application. A condition on the grant of a petition under proposed paragraph (5) of § 1.313(b) is that applicant agrees to abandon the present application in favor of a continuing application to have the information considered in the continuing application. This option is available to any applicant, and may be used by those applicants who choose not to certify that they first became aware of the information within three months of filing the proposed information disclosure statement. The Office thus provides every reasonable opportunity for an individual to avoid the consequences of failure to comply with § 1.56, and provides definite deadlines to preserve efficient operation of the Office.

Section 1.555 is proposed to be revised to conform with the amendments in proposed § 1.56(a). Although reexamination proceedings are based on patents or printed publications, patent owners and individuals involved on their behalf in a reexamination proceeding need to disclose to the Office all information material to the patentability of a new claim or to the patentability of a claim of the patent in such a proceeding. For example, prior admissions against interest by the patentee need to be disclosed. Section

1.555(a) is proposed to be revised to correspond to proposed § 1.56(a).

Paragraphs (b) and (c) of current § 1.555 are proposed to be deleted because paragraph (a) has been amended to require that information disclosure statements filed in a reexamination proceeding must meet the requirements of proposed § 1.98. Patent owners are encouraged to file an information disclosure statement in a timely manner. Provisions similar to proposed § 1.97 are not considered necessary in a reexamination proceeding because late-filed statements have not been a problem in these proceedings, and the patent owner does not have the opportunity to refile the proceeding in reexamination. The provisions of § 1.555(c) are proposed to be deleted as unnecessary, and § 1.555(d) is proposed to be redesignated as paragraph (b) of § 1.555.

Part 10 is proposed to be amended to reflect changes made in the rules related to duty of disclosure and the requirements for execution of an application. Paragraph 10 of § 10.23(c) is proposed to be revised to parallel the language of other paragraphs of the rule by stating that the violation must be done "knowingly", and to add a reference to § 1.555.

Paragraph 11 of § 10.23(c) is proposed to be revised to reflect that § 1.56(c) is proposed to be deleted. Although applications having defects in their execution will no longer be stricken, the Office desires to continue to discourage practitioners from permitting alterations in the application papers after the oath or declaration is signed, especially if such alterations are material. Merely editing, such as correcting misspellings, would not be considered to involve material alterations; nor would the insertion of filing or patent information of a parent or related application. However, adding to or deleting from the application matters of substance, such as a working example or claim language, would be considered to be a material alteration.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the proposed rules do

not require individuals to submit information that they are not already aware of and are not already under an obligation to provide to the Office. The proposed rules further promote the efficiency of the examination process by encouraging a timely submission of an information disclosure statement and by substantially eliminating rejections based on inequitable conduct, thereby reducing the costs to all patent applicants.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity or innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this proposed rule has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act, which has previously been approved by the Office of Management and Budget under Control No. 0651-0011. Each information disclosure statement is estimated to take approximately 45 minutes, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention Paper Reduction Project 0651-0011)

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In § 1.17, paragraph (i)(1) is proposed to be revised and paragraph (p) is proposed to be added to read as follows:

§ 1.17 Patent application processing fees.

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph..... \$120.00

Sec.

1.12—for access to an assignment record.

1.14—for access to an application.

1.53—to accord a filing date.

1.55—for entry of late priority papers.

1.60—to accord a filing date.

1.62—to accord a filing date.

1.97(d)—to consider an information disclosure statement.

1.103—to suspend action in application.

1.177—for divisional reissues to issue separately.

1.312—for amendment after payment of issue fee.

1.313—to withdraw an application from issue.

1.314—to defer issuance of a patent.

1.334—for patent to issue to assignee, assignment recorded late.

1.666(b)—for access to interference settlement agreement.

(p) For submission of an information disclosure statement under § 1.97 (c)..... \$200.00

3. Section 1.28, paragraph (d)(2) is proposed to be revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(d) (1) * * *

(2) Improperly and with intent to deceive

(i) Establishing status as a small entity, or

(ii) Paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

4. Section 1.51, paragraph (b) is proposed to be revised to read as follows:

§ 1.51 General requisites of an application.

(b) * * *

(b) Applicants are encouraged to file an information disclosure statement. See §§ 1.97 and 1.98.

5. Section 1.52, paragraph (c) is proposed to be revised to read as follows:

§ 1.52 Language, paper, writing, margins.

(c) Any interlineation, erasure, cancellation or other alteration of the application papers filed should be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67(c). After the signing of the oath or declaration referring to the application papers, amendments may be made in the manner provided by §§ 1.121 and 1.123 through 1.125.

6. Section 1.56 is proposed to be revised to read as follows:

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Individuals associated with the filing and prosecution of a patent application have a duty of candor and good faith in their dealings with the Office, which includes a duty to disclose to the Office all information known to them to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled, or withdrawn from consideration, or the application becomes abandoned.

Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The requirements of this section are deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or

submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. The Office encourages applicants to carefully examine (1) prior art cited in search reports of a foreign patent office in a counterpart application, and (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record in the application, and

(1) It creates, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It supports a position of unpatentability taken by the Office which the applicant disputes, or it is inconsistent with a position in support of patentability on which the applicant relies.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

7. Section 1.62, paragraphs (b)(3) and (d) are proposed to be revised to read as follows:

§ 1.63 Oath or declaration.

(b) Acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

(d) In any continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, the oath or declaration must also state that the person making the oath or declaration acknowledges the duty to disclose to the

Office all information known to the person to be material to patentability as defined in § 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

8. Section 1.67 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 1.67 Supplemental oath or declaration.

(c) A supplemental oath or declaration meeting the requirements of § 1.63 must also be filed if the application was altered after the oath or declaration was signed or if the oath or declaration was signed:

(1) In blank;

(2) Without review thereof by the person making the oath or declaration; or

(3) Without review of the specification, including the claims, as required by § 1.63(b)(1).

9. Section 1.97 is proposed to be revised to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order to have information considered by the Office during the pendency of a patent application, an information disclosure statement in compliance with § 1.98 should be filed in accordance with this section.

(b) An information disclosure statement shall be considered by the Office if filed:

(1) Within three months of the filing date of a national application;

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; or

(3) Before the mailing date of a first Office action on the merits, whichever event occurs last.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, but before the mailing date of either

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, provided the statement is accompanied by either a certification as specified in paragraph (e) of this section or the fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed after the mailing date of either

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, but before payment of the issue fee, provided the statement is accompanied by:

(i) A certification as specified in paragraph (e) of this section,

(ii) A petition requesting consideration of the information disclosure statement, and

(iii) The petition fee set forth in § 1.17(i)(1).

(e) A certification under this section must state that no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, or, to the knowledge of the person signing the certification, was known to any individual designated in § 1.56(c), more than three months prior to the filing of the statement.

(f) No extensions of time for filing an information disclosure statement are permitted under § 1.136. If a bona fide attempt is made to comply with § 1.98, but part of the required content is inadvertently omitted, additional time may be given to enable full compliance.

(g) An information disclosure statement filed in accordance with this section shall not be construed as a representation that a search has been made.

(h) Information disclosure statements, filed before the grant of a patent, which do not comply with this section and § 1.98 will be placed in the file, but will not be considered by the Office.

10. Section 1.98 is proposed to be revised as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include:

(1) A list of all patents, publications, or other information submitted for consideration by the Office;

(2) A legible copy of:

(i) Each U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed;

(iii) All other information, except a U.S. patent application, or that portion which caused it to be listed; and

(3) A concise explanation of the relevance of each patent, publication, or other information listed. The concise explanation may be either separate from the specification or incorporated therein.

(b) Each U.S. patent listed in an information disclosure statement shall be identified by patentee, patent number and issue date. Each foreign patent or published foreign patent application shall be identified by the country or

patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application. Each publication shall be identified by author (if any), title, relevant pages of the publication, date and place of publication.

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications provided that a statement is made that these other patents or publications are cumulative. If a written English language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in § 1.56(c), a copy of the translation shall accompany the statement.

(d) A copy of any patent, publication or other information listed in an information disclosure statement is not required to be provided if it was previously submitted to the Office in a prior application, provided that the prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120.

§ 1.99 [Removed and Reserved]

11. Section 1.99 is proposed to be removed and reserved.

12. Section 1.175, paragraph (a)(7), is proposed to be revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) * * *

(7) Acknowledging the duty to disclose to the Office all information known to applicants to be material to patentability as defined in § 1.56.

* * * * *

13. Section 1.193(c) is proposed to be removed and reserved:

§ 1.193 Examiner's Answer.

* * * * *

(c) [Reserved]

14. Section 1.291, paragraphs (a) and (c), are proposed to be revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if (1) the protest is timely submitted; and (2) the

protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues. Protests which do not adequately identify a pending patent application will be disposed of and will not be considered by the Office.

* * * * *

(c) A member of the public filing a protest under paragraph (a) of this section in an application will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office may communicate with the applicant regarding any protest and may require the applicant to respond to specific questions raised by the protest. In the absence of a request by the Office, an applicant has no duty to, and need not, respond to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered unless such submission raises new issues which could not have been earlier presented.

15. Section 1.313, paragraph (b), is proposed to be revised to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) When the issue fee has been paid, the application will not be withdrawn from issue for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of § 1.56 or illegality in the application;

(3) Unpatentability of one or more claims;

(4) For interference; or

(5) For abandonment to permit consideration of an information disclosure statement under § 1.97 in a continuing application.

(16). Section 1.555 is proposed to be revised to read as follows:

§ 1.555 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the

teachings of all information material to patentability as defined in § 1.56. Individuals associated with the patent owner in a reexamination proceeding have a duty of candor and good faith in their dealings with the Office, which includes a duty to disclose to the Office all information known to them to be material to patentability. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The requirements of this section are deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or called to the attention of the Office in an information disclosure statement. Any information disclosure statement must be filed in accordance with § 1.98, and should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such information to the attention of the Office.

(b) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

17. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 8, 31, 32, 41.

18. Section 10.23, paragraphs (c)(10)

and (c)(11), are proposed to be revised to read as follows:

§ 10.23 Misconduct.

(c) * * *

(10) Knowingly violating or causing to be violated the requirements of § 1.56 or § 1.555 of this subchapter.

(11) Knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers.

Dated: August 1, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-18588 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 260, and 261

[FRL-3981-5]

Extension of Comment Period for Proposed Rule Establishing Test Procedures for the Analysis of Pollutants; Identification of Hazardous Waste; Test Methods

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published on July 3, 1991 [56 FR 30519] establishing analytical methods under the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) to allow the use of alternative solvents in lieu of chlorofluorocarbons (CFCs) in these methods. The original deadline for comments is being extended for sixty days because various laboratory groups are continuing testing to validate alternative solvents, and therefore more time is needed to collect additional data.

DATES: Comments for the proposed rule should be submitted in writing to the address shown below on or before October 1, 1991 to be considered in the formulation of the final rule.

ADDRESSES: The public must send an original and two copies of their

comments to the EPA RCRA/CWA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Document number f-91-MEI-FFFFF on your comments. The EPA RCRA Docket is located in room 2427, 401 M Street, SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m. Monday through Friday, except Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies are \$0.20 per page. To expedite review, it is also recommended that a duplicate copy of written comments be sent to Dr. Reva Rubenstein at the address listed below.

FOR FURTHER INFORMATION CONTACT:

For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone No. (800) 424-9346 (toll free) or (202) 382-3000 locally. For technical information about the RCRA portion of this proposal, contact Mr. Alexander C. McBride, Technical Assessment Branch, Office of Solid Waste (OS-332) at (202) 382-4761 or Mr. David Friedman, Office of Research and Development at (202) 245-3535. For technical information on the CWA portion of this proposal, contact Mr. William Telliard, Energy and Mining Branch, Industrial Technology Division (WH-552) at 382-2272. For technical information related to the analytical methods, contact J.J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, at (513) 569-7306. For technical information about the method used by the Office of Underground Storage Tanks in this proposal, contact Mr. David Wiley, Standards Branch, Office of Underground Storage Tanks (OS-410) at (703) 308-8875. For more information on the Montreal Protocol and related CAAA regulatory activities, contact Dr. Reva Rubenstein, Division of Global Change, Office of Air and Radiation (ANR-445), at (202) 382-7410.

Dated: July 30, 1991.

Michael Shapiro,

Acting Assistant Administrator.

[FR Doc. 91-18619 Filed 8-5-91; 8:45 am]

BILLING CODE 6510-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

49 CFR Part 571

[Docket No. 74-09; Notice 22]

Planning Document on Potential
Standard 213 Upgrade; Federal Motor
Vehicle Safety Standards; Child
Restraint Systems

AGENCY: National Highway Traffic
Safety Administration (NHTSA),
Department of Transportation.

ACTION: Request for comments;
extension of comment period.

SUMMARY: This notice grants a request
from the Child Passenger Protection
Research Program, the University of
Michigan, for extension of the period to
submit written comments on an agency
request for comments to the planning

document on potential changes to
Federal Motor Vehicle Safety Standard
No. 213, *Child Restraint Systems*.

DATES: The comment closing date is
changed from September 3, 1991, to
October 3, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. George Mouchahor, Office of
Vehicle Safety Standards, National
Highway Traffic Safety Administration,
400 Seventh Street SW., Washington,
DC 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION: On July
17, 1991, NHTSA published in the
Federal Register (56 FR 32544) a notice
announcing the publication of a
planning document that discusses
planned research and possible upgrades
to Federal Motor Vehicle Safety
Standard No. 213, *Child Restraint
Systems*. This notice is also seeking
public review and comment on the
planning document. The agency
originally established a 45-day comment
period.

The Child Passenger Protection
Research Program of the University of
Michigan has requested a 30-day
extension of the comment period. That
organization submitted this request
because of concerns about the future of
child restraints and the necessity to
spend significant time formulating
responses to the specific items
addressed, as well as covering topics
not addressed in the plan.

After consideration of the request,
NHTSA has decided to extend the
comment period by the requested 30-
days. The agency has concluded that a
30-day extension of the comment period
is warranted considering the
significance and public interest in this
subject.

Issued on July 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-18461 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 56, No. 151

Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver-Dry Timber Sales, Helena National Forest, Powell and Lewis and Clark Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service is gathering information and preparing an Environmental Impact Statement (EIS) for a proposal to harvest timber, reforest the site, and construct haul roads in the Beaver Creek, Dry Creek and Lincoln Gulch drainages on the Lincoln Ranger District. The Beaver Creek drainage is located approximately 3 air miles northwest of Lincoln, Montana.

The Forest Service proposes to harvest approximately 8 million board feet of timber through using a variety of harvest methods on approximately 650 acres of forest land. The proposal also includes the construction of 10 miles of new haul roads to access the specific harvest units.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan. More specifically, the proposal has the following purpose:

1. Increase overall forest health and timber productivity in treated stands by: (1) Replacing mature and overmature trees with younger trees capable of increased growth; (2) harvesting stands with poor health and vigor due to insect and disease damage or poor stocking levels and regenerate or encourage growth on healthier trees.
2. Initiate activities to shift the age class distribution towards the desired future condition as described in the Helena Forest Plan.
3. Move towards the desired future condition as described in the Forest Plan for fish and wildlife by the spatial distribution of harvest units.

4. Assess opportunities for recreation improvement.

5. Validate Forest Plan management area allocations in the project area.

DATES: Comments concerning the scope of the analysis should be received in writing on or before September 5, 1991.

ADDRESSES: The responsible official is Ernest R. Nunn, Forest Supervisor, Helena National Forest, 301 S. Park, Drawer 10014, Federal Office Building, room 328, Helena, MT. 59626.

FOR FURTHER INFORMATION CONTACT: Glenda Scott, EIS Team Leader, Helena National Forest, Lincoln Ranger District, P.O. Box 219, Lincoln, MT. 59626. PHone: (406) 362-4265.

SUPPLEMENTARY INFORMATION: The timber sale(s) and road construction would occur on National Forest lands in portions of the Lincoln Gulch, Beaver Creek and Dry Creek drainages of the Lincoln Ranger District. Included in the area being analyzed is all or portions of T.15N., R.10W., sections 20-29, 35 and 36; T.14N., R.10W., sections 1, 2, 12, and 13; T.15N., R.9W., sections 19, 20, 21, 28-33 and T.14N., R.9W., sections 5-8, 17, 18, Montana Principle Meridian.

Harvest units and road construction are proposed in roadless areas. Approximately 36 acres of harvest and 0.5 miles of road construction are proposed in the Bear-Marshall-Scapegoat-Swan Roadless Area (1485) and 230 acres of harvest and 3.3 miles of road are proposed in the Lincoln Gulch Roadless Area (1601). These areas have not been considered for inclusion in the National Wilderness System by the Helena Forest Plan or by past legislative wilderness proposals.

The areas of proposed harvest are within management areas T-1 and T-3 described in the Helena Forest Plan. The direction states that T-1 is available and suitable for timber harvest. T-3 lands provide important spring and summer habitat requirements for all big game species as well as being available and suitable for timber harvest.

The decision to be made is the amount and timing of harvesting and location of harvest units within the roaded and roadless portions of the project area. Activities may begin as early as fall of 1992. Associated with this is, the miles of road construction, fuels treatment and reforestation and stand improvement activities needed to meet the objectives.

This EIS will tier to the Helena Forest Plan and Final EIS of April 1986, which provides program goals, objectives and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the Forest Plan.

A project feasibility analysis was initiated in January 1991. Analysis and collection of site specific information has been on-going since that time. The Forest Service is seeking information and comments from Federal, State, local agencies, and other organizations or individuals who may be interested in or affected by the proposed actions. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperation agencies.

Prescribed harvest treatments in this proposal include even aged management techniques of clearcutting, shelterwood and seed tree harvests. Alternatives to this proposal will include varying degrees of uneven aged systems, intermediate stand treatments, salvage harvests and stand improvement activities.

The preliminary issues identified are:

1. Affects on roadless characteristics.
2. Impacts to fisheries.
3. Affects to long term and short term thermal cover needs.
4. Impacts on elk movement patterns.
5. Affects to old growth forest conditions.
6. Visual impacts to local communities.
7. Potential for sedimentation increases in Beaver, Stonewall, Lincoln Gulch, Arrastra, and Dry Creeks.
8. Alterations to forest health and vigor.
9. Fire hazards and burning opportunities.
10. Recreation use and potential for changes in use.

The Forest Service will analyze and disclose in the DEIS/FEIS the

environmental effects of the proposed action and a reasonable range of alternatives, including no action. The alternatives to the proposed action will be developed to respond to the purpose and need for the action. The DEIS/FEIS will disclose the direct, indirect, and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with Forest Service officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments and the Forest Service will conduct public scoping meetings in Helena, Montana and Lincoln, Montana for the receipt of verbal comments. The dates and location will be published locally. This period extends for 30 days from the date of publication of this notice. The second review period is during the review of the DEIS in February and March 1992 when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February 1992. At that time, the EPA will publish a notice of availability of the DEIS in the *Federal Register*.

The comment period on the draft environmental impact statement will be 45 days from the date the notice of availability is published in the *Federal Register*.

At this early stage in the scoping process, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Secondly, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so

that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS. The EIS is expected to be filed in June 1992.

Dated: July 25, 1991.

Ernest Nunn,

Forest Supervisor, Helena National Forest.

[FR Doc. 91-18532 Filed 8-5-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 10 p.m. on August 27, 1991, at the Radisson Hotel Birmingham, 808 South 20th Street, Birmingham, Alabama 35205. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-18528 Filed 8-5-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on August 27, 1991, at the Ramada Inn-Airport, 2301 NW. 12th Street, Lincoln, Nebraska 68521. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-18529 Filed 8-5-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation - 1990 Panel Wave 7.

Form Number(s): SIPP-10700, 10703, 10705(L).

Agency Approval Number: 0607-0670.

Type of Request: Revision of a currently approved collection.

Burden: 67,725 hours.

Number of Respondents: 135,450.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1990 Panel Wave 7 and the 1991 Panel Wave 4 are identical. They are the following: (1) Selected Financial Assets, (2) Medical Expenses and Work Disability, and (3) Real Estate and Shelter Costs, Dependent Care, and Vehicles. Wave 7 interviews will be conducted from February through May of 1992.

Affected Public: Individuals or households.

Frequency: There will be three interview periods for the 1990 Panel in Fiscal Year 1992.

Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1991.

Edward Michals,
Departmental Forms Clearance Officer,
Office of Management and Organization.
[FR Doc. 91-18570 Filed 8-5-91; 8:45 am]
BILLING CODE 3510-07-F

International Trade Administration

[A-588-401]

Calcium Hypochlorite From Japan; Termination, In Part, of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination, In Part, of Antidumping Duty Administrative Review.

SUMMARY: On May 24, 1989 (54 FR 22465) and June 1, 1990 (55 FR 22366), the Department of Commerce initiated administrative reviews of the antidumping duty order on calcium hypochlorite from Japan for the periods April 1, 1988, through March 31, 1989, and April 1, 1989, through March 31, 1990, respectively, for calcium hypochlorite from Japan manufactured by Nippon Soda Co., Ltd. The Department of Commerce has now decided to terminate these reviews.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, we published a notice initiating the administrative review of the antidumping duty order on calcium hypochlorite from Japan for the period April 1, 1988, through March 31, 1989 (54 FR 22465). On July 1, 1990, we published a notice initiating the administrative review for the period April 1, 1989, through March 31, 1990 (55 FR 22366). Those notices stated that we would review three companies: Nippon Soda Co., Ltd., Tohoku Tosoh Chemical Co., Ltd., and Nankai Chemical Industry Co., Ltd.

On October 10, 1990, we published a notice of "Final Results of Antidumping Duty Administrative Review and Revocation in Part" (55 FR 41259) for the periods April 1, 1986, through March 31, 1987, and April 1, 1987, through March 31, 1988. In that notice we revoked the order on Nippon Soda Co., Ltd. As a result, we are terminating the reviews for Nippon Soda Co., Ltd., for the periods April 1, 1988, through March 31, 1989, and April 1, 1989, through March 31, 1990. A notice of "Final Results of Antidumping Duty Administrative Review" for the latter two review periods for Nankai Chemical Industry Co., Ltd., and Tohoku Tosoh Chemical Co., Ltd., was published on December 11, 1990 (55 FR 50853).

Dated: July 30, 1991.

Roland L. MacDonald,
Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18622 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Preliminary Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Larry Sullivan, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 or 377-0114, respectively.

PRELIMINARY RESULTS:

Case History

On April 5, 1991, the Department of Commerce ("the Department") published in the Federal Register (56 FR 14072) the final results of the administrative reviews of the antidumping duty order on portable electric typewriters ("PETs") from Japan (45 FR 18416, March 21, 1980) covering the period May 1, 1986, through April 30, 1988.

On May 31, 1989, Smith Corona Corporation ("Smith Corona") and Nakajima All Co., ("Nakajima") requested that the Department conduct an administrative review for the period May 1, 1988, through April 30, 1989, in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review for Matsushita Electric Industrial Corporation ("Matsushita"), Nakajima, Brother Corporation ("Brother"), Canon Inc./Canon U.S.A. ("Canon"), Sharp Corporation ("Sharp"), and Silver Seiko, Ltd. ("Silver Seiko") on June 21, 1989 (54 FR 26069). The Department did not initiate an administrative review with respect to Royal Business Machines, Inc., as requested by Smith Corona, because petitioner failed to identify any Japanese company with which Royal is affiliated which may be a Japanese manufacturer or exporter of PETs.

On June 23, 1989, August 11, 1989, September 8, 1989, and September 15, 1989, we received letters from Silver Seiko, Brother, Matsushita, and Sharp, respectively, informing us that they did not export PETs subject to the order during the review period. We also received a letter from Canon on August 31, 1989, informing us that it would not be responding to our questionnaire.

On May 30, 1990, Smith Corona requested that the Department conduct an administrative review for the period May 1, 1989, through April 30, 1990, in

accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review for Matsushita, Nakajima, Brother, Canon, Sharp, Silver Seiko, Fujitsu American, Inc. ("Fujitsu"), Tokyo Jiki Industrial Co., Ltd. ("Jiki"), Tokyo Electric Company, Ltd. ("Tokyo Electric") and Towa Espo Corporation ("Towa Espo") on July 6, 1990 (55 FR 27859).

On July 26, August 1, December 5, December 17, December 20, and December 28, 1990, we received letters from Tokyo Electric, Jiki, Silver Seiko, Fujitsu, Towa Espo and Sharp, respectively, informing us that they did not export PETs subject to the order during the review period. We received a letter from Canon on December 20, 1990, informing us that it would not be responding to our questionnaire. On December 31, 1990, we received a letter from Brother indicating that all of its shipments entered prior to May 1, 1990, were liquidated.

On November 21, 1990, the Department sent a revised questionnaire to all respondents requesting information on certain PETs not previously covered by the order, pursuant to the Court of Appeals for the Federal Circuit ("CAFC") ruling affirming the Court of International Trade ("CIT") decision of February 3, 1989. See the "Scope of the Review" section of this notice for further information.

On November 5, 1990, Smith Corona made an allegation in the 1989-90 administrative review of sales below the cost of production ("COP") with regard to Nakajima's sales of PETs to Canada. On December 19, 1990, the Department rejected Smith Corona's allegation because it was not sufficiently specific to the subject merchandise to warrant the initiation of a COP investigation.

In response to the assertion by Nakajima, Matsushita, and Brother that a large number of their entries newly determined to be subject to the order had been liquidated, the Department requested, on December 18, 1990, that all respondents report, for each model and each period of review, the volume of liquidated and unliquidated entries. Based on the responses received from Nakajima and Matsushita, the Department determined that it would only review unliquidated entries of automatic PETs ("PATs") and PETs for these companies, since: (1) They appeared to adequately represent the models of the subject merchandise entered during the 1989-90 review period, (2) they were of a sufficient volume to serve as a basis for calculating the duty deposit rate, and (3)

there was no information indicating that limiting the Department's analysis to the unliquidated entries would be distortive or unrepresentative of each company's selling practices for liquidated merchandise entered after February 3, 1989 and before April 5, 1990.

Since Brother did not have unliquidated entries of PETs or PATs during either review period, on April 5, 1991, we requested that Brother report the sales data for its liquidated entries for the period December 1989 through May 1990. Brother responded on April 10, 1990, that it did not have any entries of the subject merchandise during this period. Since we had no basis upon which to establish the cash deposit rate for future entries of the subject merchandise, we requested, on April 12, 1991, that Brother report all liquidated entries of the subject merchandise for the most recent month in 1989 in which it had entries and the four months prior to that month, as long as each month fell within the 1989-90 review period. On May 20, 1991, Brother responded that it would not be responding to our request for information regarding liquidated entries of PETs.

Verification of Nakajima and Nakajima U.S.A. ("NUSA"), was conducted from May 28 through June 14, 1991. Verification of Matsushita, Matsushita Electric of Canada, Ltd. (MELCA) and Matsushita Electric Corporation of America (MECA) was conducted from June 19 through July 12, 1991. The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Use of Best Information Available

Two firms failed to respond to our request for information. Specifically, for both review periods, Canon refused to respond to our questionnaires. In addition, for the 1989-90 review period, Brother refused to respond to the Department's April 12, 1991, request for information. In deciding what to use as best information available, § 353.37(b) of the Department's regulations provides that the Department may take into account whether a party fails to provide requested information. When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department generally assigns to that company the higher of: (a) The highest rate for a responding firm with shipments during the period or (b) the highest rate for that company for any previous review or the original investigation. In this case we assigned non-responding companies their highest rate from prior reviews.

Scope of the Review

On April 5, 1990, the Department published in the *Federal Register*: Portable Electric Typewriters; Court of International Trade Decision Concerning the Scope of the Antidumping Duty Order (55 FR 12701) ("CIT Decision"), a notice suspending liquidation of all unliquidated entries of PATs, and PETs incorporating a calculating mechanism, entered or withdrawn from warehouse for consumption on or after February 3, 1989. On September 26, 1990, a CAFC decision established finally that these products were within the scope of the antidumping duty order on PETs from Japan. See, Portable Electric Typewriters from Japan; Court of Appeals for the Federal Circuit Decision Concerning the Scope of the Antidumping Duty Order (55 FR 42423, October 19, 1990). Therefore, beginning February 3, 1989, these reviews cover PETs, PATs, and PETs incorporating a calculating mechanism. (For a complete explanation of the history of the scope in this proceeding, see Final Scope Ruling: Portable Electric Typewriters from Japan (55 FR 47358, November 13, 1990), and CIT Decision.)

The merchandise covered by these reviews is now currently classified under subheadings 8469.10.00, 8469.21.00 and 8469.29.00 of the Harmonized Tariff System (HTS). Prior to January 1, 1989, this merchandise was classified under subheading 675.0510 and, in some cases, under subheading 676.0540 of the Tariff Schedules of the United States Annotated (TSUSA). Although the HTS and TSUSA subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Review Periods

The review periods are May 1, 1988, through April 30, 1989, and May 1, 1989, through April 30, 1990.

United States Price

For Matsushita, we based United States price ("USP") on exporter's sales price ("ESP"), in accordance with section 772(c) of the Act, because all sales used for purposes of our analysis were made to unrelated parties after importation into the United States. For Nakajima, in the 1988-89 review period, we based the USP on purchase price ("PP"), in accordance with section 772(b) of the Act, both because the PETs were sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. For Nakajima in the

1989-90 review period, we based USP on both PP and on ESP.

Matsushita

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign shipping charges, foreign warehouse expenses, customs duties, customs processing fees, ocean freight, U.S. harbor maintenance fees, insurance, brokerage, U.S. inland freight and freight out, in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for volume rebates, early payment rebates, sales promotion expense, off-invoice sales promotion, three types of off-invoice discounts, local sales promotion allowance, cooperative advertising, after-invoice credits, warranties, accounts receivable credit expense, three types of royalty expenses and indirect selling expenses, which include expenses for service manuals, national advertising expenses, four types of inventory carrying costs, administrative and indirect selling expenses incurred in Japan, indirect selling and general and administrative expenses incurred in the United States, other advertising, and U.S. service expenses, in accordance with section 772(e) of the Act.

Matsushita claimed the expense for service manuals as a direct selling expense. At verification, we discovered that these manuals are provided to customer service centers and not the customers's customer. Therefore, we have treated this expense as an indirect selling expense. In addition, Matsushita claimed its national advertising expense as a direct selling expense. At verification, we established that the expense reported was for national advertising which was institutional in nature or not directed at the customer of Matsushita's customer. Therefore, we treated national advertising as an indirect selling expense. We also found minor clerical errors in the figures reported for sales promotion expense and brokerage. We included the corrected figures in our calculations.

We discovered at verification that several entries which had been suspended, pursuant to our instructions to Customs in the *Federal Register* of April 5, 1990, were subsequently liquidated. Matsushita claimed it was unaware of these liquidations when preparing its response and, as a result, submitted a sales listing which contained sales tied to the liquidated entries. Since the Department's decision not to require Matsushita to report data on liquidated entries was based on the

amount of unliquidated entries originally reported, we have included these entries in order to have an adequate basis on which to calculate Matsushita's weighted-average duty deposit margin.

Nakajima

For both review periods, we calculated PP based on the packed, F.O.B. (Japan), C&I or delivered price to unrelated purchasers in the United States. For the 1988-89 review period, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, U.S. inland freight, U.S. brokerage and handling, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act. We also made a deduction to PP for labels. We determined that certain of Nakajima's PP sales which were reported in the context of the 1988-89 review period (because the sales occurred during that period) were more appropriately evaluated in the 1989-90 review period since this was the time period in which they entered the United States.

For 1989-90, we made deductions to the PP, where appropriate, for foreign brokerage and handling, foreign inland freight, containerization, marine insurance, U.S. brokerage and handling, U.S. inland freight and ocean freight, in accordance with section 772(b)(2) of the Act. For the ESP sales during this review period, we made deductions for foreign inland freight, containerization, ocean freight, U.S. brokerage and handling and U.S. inland freight and insurance, credit, discounts, royalties, advertising and indirect selling expenses, including inventory carrying costs, in accordance with section 772(d)(2) of the Act.

At verification of NUSA, we discovered minor clerical errors for certain sales and expenses. For purposes of our preliminary results, we have included the corrected information in the calculation of Nakajima's weighted-average margin.

Nakajima failed to report sales of unliquidated entries of PATs in its response for the 1988-89 review period. For purposes of the preliminary determination, as BIA we assigned to these units the highest unit margin and the lowest value for any Nakajima sale of PETs during this review period. We then factored in the resulting margin to calculate an adjusted, weighted-average margin for all products.

Foreign Market Value

In order to determine whether there were sufficient sales of PETs in the home market to serve as the basis for calculating FMV, we compared the

volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1)(B) of the Act. Matsushita reported, and the Department verified, that they had no sales of PETs in the home market during the review period. For both periods, Nakajima had sales of PETs in the home market, but the volume of home market sales was less than five percent of third country sales. Therefore, for these companies, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 353.48 of the Department's regulations.

In selecting which third country market to use for comparison purposes, we first determined which third country markets had an "adequate" volume of sales. We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded or was equal to five percent of the volume sold to the United States. In selecting which of the third country markets having an adequate sales volume was the most appropriate for comparison purposes, we followed § 353.49 of the Department's regulations.

Matsushita

We determined that sales to Canada were the most appropriate basis for calculating FMV.

We calculated FMV based on packed, delivered prices to unrelated customers in Canada. We made deductions, where appropriate, for foreign inland freight, foreign warehousing, foreign shipping expenses, Canadian federal sales tax, ocean freight, air freight, inland freight, marine insurance, brokerage, and freight-out. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1).

We made further deductions, where appropriate, for after-invoice credits, floor expenses, volume rebates, early payment discounts, sales promotion expenses, national advertising, cooperative advertising, warranties, accounts receivable credit, two types of royalties, and catalog expenses, in accordance with section 773(a)(4)(B) of the Act. We also made deductions for third country indirect selling expenses, including four types of inventory carrying costs, administrative and indirect selling expenses incurred in Japan, indirect selling and general and administrative expenses incurred in Canada, manual expenses, bad debt, service expenses, indirect sales promotion expenses, and "other" advertising expenses. The deduction for

third country indirect selling expenses was capped by the sum of the indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations.

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

At verification, we discovered minor clerical errors on warranty expenses, inventory carrying costs and volume rebates. The corrected figures have been included in our calculations.

Nakajima

For the 1988-89 review period, third country prices were based on the packed, F.O.B. price to unrelated purchasers in Canada. We made deductions, where appropriate, for foreign inland freight, and foreign brokerage and handling. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. We made adjustments for differences in circumstances of sale between the two markets, in accordance with § 353.56 of the Department's regulations. We adjusted for differences in bank handling, credit, advertising, and royalties.

For the 1989-90 review period, we calculated FMV based on packed, F.O.B. prices to unrelated customers in the Federal Republic of Germany. We made deductions, where appropriate, for foreign inland freight, containerization, and foreign brokerage and handling. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1).

For comparisons involving PP transactions, we made adjustments for differences in circumstances of sale between the markets in accordance with § 353.56 of the Department's regulations. We adjusted for differences in bank handling, credit, royalties and warranties. For comparisons involving ESP transactions, we made deductions, where appropriate for bank handling, credit, warranties, and indirect selling expenses. Indirect selling expenses were capped by the sum of the indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations.

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Certain Nakajima PP sales were reported in the context of both review periods due to the timing of their sale and entry into the United States. However, Nakajima did not report contemporaneous third country sales in both review periods. Because we have determined that these PP sales are most appropriately evaluated in the 1989-90 review period (see United States Price section above) we have used, for purposes of the preliminary determination, the most contemporaneous FRG sales reported in the 1989-90 review period as best information available for FMV. For purposes of the final determination, we have asked Nakajima to submit contemporaneous FRG sales by August 8, 1991.

For both the 1988-89 and 1989-90 review periods, Nakajima did not report third country or U.S. typewriter warranty expenses in its sales listing but did include these figures in its narrative response. Nakajima did not incur third country or U.S. typewriter warranty expenses in the 1988-89 period. For comparisons to PP sales in the 1989-90 review, we made an adjustment to FMV for differences in warranty expenses incurred during the period of review. For comparisons to ESP sales in the 1989-90 review, we deducted from FMV third country typewriter warranty expenses incurred during the period of review.

At verification of NUSA, we discovered minor clerical errors concerning foreign inland freight and difference in merchandise adjustments ("difmer"). For purposes of our preliminary results, we have included the corrected figures in the calculation of Nakajima's weighted average margin.

Preliminary Results of Review

As described in the "Case History" section of this notice, Sharp and Silver Seiko claimed that they made no exports of PETs to the United States during the 1988-89 review period. We have requested the U.S. Customs Service ("Customs") to verify that these two companies made no shipments to the United States during this period. For the 1989-90 review period, Fujitsu, Juki, Sharp, Silver Seiko, Tokyo Electric, and Towa Espo claimed that they made no exports of PETs to the United States. We have also requested Customs to verify that these six companies made no shipments to the United States during this period.

As a result of our review, we preliminarily determine that the

following margins exist for the periods May 1, 1988, through April 30, 1989, and May 1, 1989, through April 30, 1990:

Manufacturer/exporter	Review period	Margin (percent)
Brother	5/01/88-4/30/89	62.79
	5/01/89-4/30/90	62.79
Nakajima	5/01/88-4/30/89	0.79
	5/01/89-4/30/90	8.13
Matsushita	5/01/88-4/30/89	4.92
	5/01/89-4/30/90	0.27
Silver Seiko	5/01/88-4/30/89	¹ 88.85
	5/01/89-4/30/90	¹ 88.85
Sharp	5/01/88-4/30/89	¹ 37.12
	5/01/89-4/30/90	¹ 37.12
Canon	5/01/88-4/30/89	88.85
	5/01/89-4/30/90	88.85
Fujitsu American, Inc.	5/01/89-4/30/90	¹ 5.20
Juki Corp./Juki Office Machine Corporation	5/01/89-4/30/90	¹ 2.40
Tokyo Electric Company, Ltd.	5/01/89-4/30/90	¹ 4.92
Towa Espo Corporation	5/01/89-4/30/90	¹ 1.41

¹ These companies had no shipments during the review period. Therefore, we assigned them their rates from the most recently completed administrative review.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of PETs entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of the review for the 1989-90 period; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for all other exporters/producers will be 8.13 percent. This is

the highest non-BIA rate for any firm included in the 1989-90 review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, we will hold a public hearing, if requested, on August 26, 1991, at 10 a.m. in room 3708, to afford interested parties an opportunity to comment on these preliminary results. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request or participate in a hearing must submit a written request within ten days of the date of publication of this notice in the *Federal Register* to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than August 14, 1991. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than August 21, 1991. An interested party may make a presentation at the hearing only on arguments included in that party's briefs. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with § 353.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 353.22(c)(5) of the Department's regulations.

Dated: July 31, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-18623 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-05-M

[A-588-015]

Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On April 26, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States, Toshiba Corporation, and the periods from September 28, 1983 through February 28, 1986.

We gave interested parties an opportunity to comment on our preliminary results. We held a public hearing on June 11, 1991.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed these final results for the fifth, sixth, and seventh reviews. The final margins range from 0.06 percent to 39.88 percent.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601 or (202) 377-4851, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1991, the Department of Commerce (the Department) published in the *Federal Register* (56 FR 19345) the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the reviews are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not

capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter to the United States of Japanese televisions, Toshiba Corporation (Toshiba), and the periods from September 28, 1983 through March 31, 1984, April 1, 1984 through February 28, 1985, and March 1, 1985 through February 28, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from one of the petitioners, Zenith Electronics Corporation (Zenith), and Toshiba, the respondent. We held a hearing on June 11, 1991.

Comment 1: Zenith argues that the Department should deduct from foreign market value (FMV) the amount realized by Toshiba by having delayed payment on its selling expenses accounts payable.

Toshiba argues that in previous proceedings the Department has repeatedly refused to make an offset against claimed selling expenses adjustment amounts for the savings realized by the delayed payment of certain selling expenses. Toshiba further argues that it is the Department's practice to avoid inputting expenses or costs where a company quantifies the actual expenses or costs, provides adequate documentation of those expenses, and the company's quantification accurately reflects the expense to the seller.

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have

determined that Toshiba accurately quantified its home market selling expenses, and that its claims accurately reflected these expenses, we have not reduced them by the amount of any savings realized as a result of delayed payment. See our response to Comment 2 in *Television Receivers, Monochrome and Color, From Japan*; Final Results of Antidumping Duty Administrative Review (54 FR 13918, April 6, 1989).

Comment 2: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Toshiba argues that the Department should not deduct antidumping-related legal expenses from USP. It argues that the Department's position in previous proceedings is that the legal fees incurred in antidumping investigations are not directly or indirectly related to sales and therefore should not be deducted.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, as well as the antidumping duty orders on color television receivers from the Republic of Korea and Taiwan, we do not consider legal expenses incurred in defense of an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. See our response to Comment 4 in *Television Receivers, Monochrome and Color from Japan*; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989). We note, moreover, that Zenith is urging that the Department disregard the Court of International Trade (CIT) opinion regarding this issue in *Daewoo Electronics Co. v. United States*, 712 F. Supp. 931 (1989) (*Daewoo*).

Comment: Zenith argues that the Department should deduct payments of estimated antidumping duties, and any expenses related to such payments from USP.

Toshiba argues that unlike ordinary duties antidumping duties paid upon entry are only estimates, with the actual amounts charged for each sale remaining unknown until an administrative review is completed. Therefore it argues that the Department

should reject Zenith's argument because the adjustment would skew the accuracy of the Department's results and artificially affect the dumping margins. It further argues that the Department's practice is not to consider antidumping duties to be expenses related to sales.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that including estimated amounts of antidumping duties in our calculations would result in inaccurate margin. We do not consider payments of estimated antidumping duties to be expenses related to the sales under review. Further, given the possibility that these estimated duties could very significantly from duties that may be assessed, we do not consider them to be "expenses" (within the meaning of section 772(d)(2)(A) of the Tariff Act) for purposes of determining U.S. price (USP). Finally, estimated duties and duties assessed are paid by the importer, which is, in some cases, unrelated to the party whose sales are under review. We have therefore not deducted estimated antidumping duties from USP in these final results. See our response to Comment 5 in *Television Receivers, Monochrome and Color from Japan*; Final Results of Antidumping Duty Administrative Review (54 FR 13918, April 6, 1989), our response to Comment 6 in *Color Television receivers from the Republic of Korea*; Final Results of Antidumping Administrative Review (56 FR 12703, 12704, March 27, 1991), and our response to Comment 8 in *Color Television Receivers, Except for Video Monitors, from Taiwan*; Final Results of Antidumping Administrative Review (56 FR 31380, July 10, 1991).

Comment 4: Zenith contends that the Department erroneously treated selling commissions in the United States as though they consisted entirely of indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. Zenith argues that, since FMV has already been adjusted for direct selling expenses, an offset to FMV comprised of indirect selling expenses up to the full amount of the U.S. commission overcompensates for the indirect portion of the commission and effectiveness negates the deduction from U.S. price of the direct expense portion of the commission.

Toshiba argues that Zenith's suggestion is contrary to the Department's regulations at 19 CFR 353.56(b), which provides for a commission offset of indirect selling

expenses for the full amount of the commissions paid.

Department's Position: We disagree with Zenith. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market, but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. Indeed, it is not necessary to examine how the recipient of the commissions spends the money because, to the seller, such monies represent direct expenses incurred as a result of that particular sale. As a result, we have offset the full amount of the U.S. commissions in these final results. See our response to Comment 6 in *Television Receivers, Monochrome and Color from Japan*; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989), our response to Comment 9 in *Color Television Receivers, Except for Video Monitors, from Taiwan*; Final Results of Antidumping Duty Administrative Review (56 FR 31381, July 10, 1991), and our response to Comment 7 in *Color Television Receivers from the Republic of Korea*; Final Results of Antidumping Duty Administrative Review (56 FR 12704, March 27, 1991).

Comment 5: Zenith asserts that the Department should ensure that the offset to FMV excludes non-selling expenses. Zenith argues that Toshiba should provide an affirmative demonstration that all of the indirect selling expenses claimed as part of the offset to FMV are actually selling expenses, and not general and administrative expenses.

Toshiba contends that Zenith's argument has been rejected in the past and should be rejected again in this proceeding. It argues that the Department does not interpret its regulations concerning indirect selling expenses in the home market as limited only to selling expenses in sales offices and as excluding so-called "non-selling" expenses incurred by those offices. Furthermore, Toshiba points out that in *Television Receivers, Monochrome and Color from Japan*; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 9, 1989) the Department included certain general expenses associated with selling in its calculation of indirect selling expenses.

Department's Position: We disagree with Zenith. We do not interpret our regulations as requiring that indirect selling expenses in the home market be

limited to selling expenses in sales offices, and as excluding general and administrative expenses incurred by those offices. As we have stated in previous reviews of this case, the pool of indirect selling expenses in the home market should include these expenses which are similar to the expenses incurred by the U.S. subsidiary, whose function it is to sell merchandise. Accordingly, the equivalent home market selling expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling. Therefore, we believe that Toshiba did not overstate its home market selling expenses, and we have used all these expenses in calculating the ESP offset for these final results. See our response to Comment 3 in Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989) and our response to Comment 4 in Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review (56 FR 12703, March 27, 1991).

Comment 6: Toshiba argues that there is no basis for the Department's deduction of quantity discounts from the USPs reported by Toshiba's U.S. subsidiaries, Toshiba America, Inc (TAI) and Toshiba Hawaii, Inc. (THI). Toshiba asserts that TAI did not grant quantity discounts on its sales of models CJ300 and CJ300WG. Toshiba contends that where TAI did grant quantity discounts on its sales of model CZ2094, it reported USPs net of such discounts. In addition, Toshiba claims that THI did not grant discounts on any models it sold during the review period.

Department's Position: For these final results, the Department made no deduction from USP for quantity discounts for any models sold by TAI or THI. We agree with Toshiba that there is no need to deduct an amount for quantity discounts from TAI's reported USPs because it reported USPs net of certain discounts. Because THI's sales were all made at the lowest list price, regardless of the quantity sold, we have made no adjustment for quantity discounts to THI's USPs. We have revised our calculations accordingly.

Comment 7: Toshiba objects to the Department's use of best information available (BIA) to determine the amount of quantity discount.

Department's Position: In these final results we have allowed Toshiba's claims for quantity discounts. We did not use BIA.

Comment 8: Toshiba argues that the Department erred in finding that TAI failed to quantify the amount of its volume discounts for the fifth and the sixth review periods.

Department's Position: We disagree. TAI provided a volume discount schedule containing anticipated sales volume and discount percentage figures without tying this information to specific sales or customers. TAI did not quantify the amount for volume discounts either as an amount or as a percentage of the sale price. Since we determined that Toshiba had not sufficiently tied its volume discount information to sales, we used BIA. We applied the following figures as BIA: the amount of TAI's quantity discount for model CZ2094 as BIA for model CZ2094's volume discount; and the actual quantity discount for model CJ300 as BIA for the volume discount of models CJ300 and CJ300WG in the fifth and sixth review periods.

Comment 9: Toshiba argues that the Department erroneously made an adjustment for volume discounts to TAI's sales in the seventh review period.

Department's Position: We agree and have made no adjustment for TAI's volume discounts in the seventh review period in these final results.

Comment 10: Toshiba argues that because TAI explained its method for calculating its volume rebate, quantified the amounts provided, and fully responded to the department's questionnaires, there is no basis for the Department's use of BIA for TAI's volume rebate.

Department's Position: We disagree. In analyzing TAI's questionnaire responses, we discovered discrepancies between TAI's U.S. sales responses and rebate schedules. Although TAI listed in its rebate schedule a specific rate as being the highest volume rebate, we found many sales with even higher rebate amounts in TAI's U.S. sales responses. Therefore, as BIA, we applied the highest reported volume rebate percentage to all of TAI's sales where a volume rebate was granted.

Comment 11: Toshiba argues that the Department failed to adjust the USP of repaired and used merchandise to reflect the difference between repaired and used merchandise sold in the United States and new merchandise sold in the home market. Zenith argues that the Department should reject both Toshiba's claimed "offset" adjustment to constructed value (CV) for the price reduction given on sales of so-called "B-class" merchandise in the U.S., as well as the adjustment to expenses in order to offset certain price adjustments on

U.S. sales. Zenith argues that there are no home market expenses underlying these adjustment claims and the claims are entirely fictional.

Department's Position: Toshiba claimed in its August 6, 1990 responses that it reported USP net of discounts, including the repaired and used merchandise discount. Therefore, we determined that no further adjustment for this discount was necessary, and used the USPs as reported in our sales comparisons. However, for purposes of calculating certain U.S. selling expenses, we added the amount of this discount to USP in order to reflect these expenses as a percentage of the original selling price.

Zenith misunderstands Toshiba's claims. Toshiba claimed an adjustment to USP, not to CV. Therefore, whether similar expenses were incurred in the home market is not relevant here since we made the adjustment to USP. Since Toshiba sold repaired and used merchandise at reduced prices, we have allowed the adjustment to USP. In addition, for sales of repaired and used merchandise, we offset the effect of the price discount on the calculation of TAI's expense allocations by adjusting U.S. indirect selling expenses downwards by the amount of the reported adjustment to expenses.

Comment 12: Toshiba argues that two variables which appeared as negative numbers in TAI's computer printouts and computer tapes, were missing from the Department's computer printout of TAI's fifth review sales response. Since Toshiba believed the problem was due to an improper command in the computer programming language used by the Department, it submitted another copy of its computer tape for the fifth review.

Department's Position: We have examined our data and corrected the error in the instructions for mounting the computer tape containing this data. The missing observations of the two variables now appear in our printout of TAI's fifth review sales. We returned the tape voluntarily submitted by Toshiba.

Comment 13: Toshiba asserts that, although an appropriate adjustment, the amount for uncollected commodity taxes was erroneously adjusted twice in the Department's computer program for the sixth review period.

Department's Position: We agree and have eliminated the second adjustment.

Comment 14: Toshiba argues that, because Toshiba's reported selling, general, and administrative (SG&A) expenses included all of Toshiba's selling expenses the Department should not have added Toshiba's reported U.S.

direct selling expenses to FMV in its CV calculations.

Department's Position: We agree. We have corrected this error in these final results by removing the addition of these U.S. direct selling expenses to CV.

Comment 15: Toshiba argues that by using total factory overhead and the product-specific mold depreciation calculated by Toshiba, the Department double-counted mold depreciation in its cost of manufacture calculations.

Department's Position: We agree and have removed the separate addition of mold depreciation expense from our calculation of cost of manufacture since this expense was included in total factory overhead.

Comment 16: Toshiba argues that it reported separate SG&A rates for the first and second halves of the sixth and seventh review periods, which did not appear in the Department's computer printout of the preliminary results.

Department's Position: In the preliminary results we intended to weight-average SG&A rates for the sixth and seventh review periods, respectively. For these final results we have ensured that the correct SG&A rates are weighted as intended in our CV calculations for the sixth and seventh review periods.

Final Results of the Reviews

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for Toshiba. Accordingly, we determine the margins to be:

Manufacturer/exporter	Review No.	Period of review	Margin (%)
Toshiba	5	9/28/83-3/31/84	39.88
Toshiba	6	4/01/84-2/28/85	17.57
Toshiba	7	3/01/85-2/28/86	0.06

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent will be required for Toshiba; this is the margin for Toshiba in the eleventh review, covering the period March 1, 1989 through February 28, 1990. For any shipments of this merchandise manufactured by Funai Electric; Fujitsu General Ltd.; Hitachi, Ltd.; Matsushita Electric Industrial Company, Ltd.; Mitsubishi Electric Corporation; NEC;

Sanyo Electric Company; Seiko Epson Corporation; or Victor Corporation of Japan, the cash deposit rate will continue to be the same as the rates published in the most recently completed final results of the administrative reviews for these firms (58 FR 5392, February 11, 1991). The cash deposit rate for Sharp shall be 38.26 percent, which is Sharp's rate for the ninth review. Since these reviews cover periods which have been superseded by more recent reviews, the rates in this notice do not affect the cash deposit rate for any firm.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations (19 CFR 353.22).

Dated: July 29, 1991.

Eric T. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-18624 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review: Certain Mirror-Polished Stainless Steel Sheet

AGENCY: Import Administration/
International Trade Administration,
Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Mirror-Polished Stainless Steel Sheet with Non-Directional Unbroken Mirror Finish

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 150 metric tons of certain mirror-polished stainless steel sheet with non-directional, unbroken mirror finish for the period October 1991 through March 1992 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Japan Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 55.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CDR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain mirror-polished stainless steel sheet with a non-

directional, unbroken mirror finish for use in decorative architectural applications. On July 25, 1991, the Secretary received an adequate petition from Clark Metals, Inc. ("Clark") requesting a short-supply allowance for 150 metric tons of this product during the period October 1991 through March 1992 under Paragraph 8 of the U.S.-Japan Arrangement. Clark is requesting short supply because it alleges that no U.S. producers produce identical or competitive products and that regular export licenses are unavailable for this product during this period.

The requested material meets the following specifications:

Raw Material Specifications

UNS Designation: S30400 (Class 1)
(Superceded AISI 304)

Pinholes—Not more than 3 pinholes of not larger than 0.08mm in 300 square meters.

Slivers—Not more than 3 slivers of not longer than 10mm in one square meter.

Finish

Finish Code "Super No. 8" (non-directional, unbroken mirror)
Surface Roughness—Rmax 0.07-0.09
micron meter

Chemical Composition

	Min.	Max.
Carbon.....		0.08
Manganese.....		2.00
Phosphorus.....		0.045
Sulfur.....		0.030
Silicon.....		1.00
Chromium.....	18.0	20.00
Nickel.....	8.0	10.50

Dimensions

thickness—0.8-6.0mm
width—1,524mm (5 feet) (max.)
length—4,500mm (14 feet 8 inches) (max.)

Tolerances

thickness—under $\frac{3}{16}$ inch
width— $\frac{1}{16}$ inch over, 0 under
length— $\frac{1}{4}$ inch over, 0 under
camber— $\frac{1}{8}$ inch

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional

quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than August 23, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than August 13, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after August 13, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1390 or (202) 377-0159.

Dated: July 31, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-18707 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-DS-M

**University of Arizona, et al.;
Consolidated Decision on Applications
for Duty-Free Entry of Electron
Microscopes**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-050. **Applicant:** University of Arizona, Tucson, AZ 85712. **Instrument:** Electron Microscope, Model H-8000 NAR. **Manufacturer:** Hitachi Scientific Instruments, Japan. **Intended Use:** See notice at 56 FR 14930, April 12, 1991. **Order Date:** December 27, 1990.

Docket Number: 91-055. **Applicant:** New York State Department of Health, Albany, NY 12201-0509. **Instrument:** Electron Microscope, Model EM 910. **Manufacturer:** Carl Zeiss, West Germany. **Intended Use:** See notice at 56 FR 14931, April 12, 1991. **Order Date:** November 21, 1990.

Docket Number: 91-056. **Applicant:** The Ohio State University, Columbus, OH 43210. **Instrument:** Electron Microscope, Model JEM-2010. **Manufacturer:** JEOL Ltd., Japan. **Intended Use:** See notice at 56 FR 23286, May 21, 1991. **Order Date:** March 11, 1991.

Docket Number: 91-058. **Applicant:** National Institutes of Health, Bethesda, MD 20892. **Instrument:** Electron Microscope, Model CM 10. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** See notice at 56 FR 23287, May 21, 1991. **Order Date:** January 29, 1991.

Docket Number: 91-064. **Applicant:** Bigelow Laboratory for Ocean Sciences, West Boothbay Harbor, ME 04575. **Instrument:** Electron Microscope with Imaging Spectrometer, Model EM902 PC/ST/G45. **Manufacturer:** Carl Zeiss, West Germany. **Intended Use:** See notice at 56 FR 23287, May 21, 1991. **Order Date:** March 1, 1991.

Docket Number: 91-070. **Applicant:** Washington University School of Medicine, St. Louis, MO 63110. **Instrument:** Electron Microscope, Model EM902/PC. **Manufacturer:** Carl Zeiss, West Germany. **Intended Use:** See notice at 56 FR 25412, June 4, 1991. **Order Date:** 1991.

Comments: None received. **Decision:** Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. **Reasons:** Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-18625 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-DS-M

**University of California, Riverside, et
al.; Consolidated Decision on
Applications for Duty-Free Entry of
Scientific Instruments**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-012.

Applicant: University of California, Riverside, Riverside, CA 92521.

Instrument: Liquid Chromatograph/Mass Spectrometer/Mass Spectrometer, Model API III.

Manufacturer: Sciex Instruments, Canada.

Intended Use: See notice at 56 FR 8184, February 27, 1991.

Reasons: The foreign instrument provides: (1) Atmospheric pressure ionization, (2) tandem (MS/MS) mass spectroscopy, (3) high performance liquid chromatography and (4) mass range to 2400.

Advice Submitted By: National Institutes of Health, May 30, 1991.

Docket Number: 91-014.

Applicant: Tulane University, New Orleans, LA 70118.

Instrument: Mass Spectrometer, Model Profile HV-3.

Manufacturer: Kratos Analytical, Inc., United Kingdom.

Intended Use: See notice at 56 FR 8185, February 27, 1991.

Reasons: The foreign instrument provides: (1) Resolution to 10,000, (2) scan speed to 0.1 second per decade and (3) flow FAB capability.

Advice Submitted By: National Institutes of Health, May 30, 1991.

Docket Number: 91-022

Applicant: Northwestern University, Chicago, IL 60611.

Instrument: Reflex Microscope.

Manufacturer: Reflex Measurement Ltd., United Kingdom.

Intended Use: See notice at 56 FR 11545, March 19, 1991.

Reasons: The foreign instrument provides determination and recording of specific points on a specimen with a repeatability of 0.002 mm in the horizontal and 0.015 in the vertical.

Advice Submitted By: National Institutes of Health, May 30, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-18626 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Approval of Exploration License Extensions and Revisions

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of approval of Deep Seabed Mining Exploration License extensions and revisions to USA-2 and USA-3 for Ocean Management, Inc., and Ocean Mining Associates.

SUMMARY: On March 26, 1991, at 56 FR 12508, the National Oceanic and Atmospheric Administration (NOAA), noticed receipt of applications for five-year extensions of Deep Seabed Mining Exploration Licenses, USA-2 and USA-3 from Ocean Management, Inc. (OMI), and Ocean Mining Associates (OMA), respectively. Amendments to the related

exploration plans and schedule of expenditures were also received. No comments objecting to approval of these proposed revisions were received.

Pursuant to the Deep Seabed Hard Mineral Resources Act (Pub. L. 96-283) and 15 CFR part 970, on 31 July 1991, NOAA approved extensions to these licenses and the exploration plans from year 1994 through 1999.

FOR FURTHER INFORMATION CONTACT:

Betty Rosser, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue, NW., suite 710, Washington, DC 20235, (202) 606-4117.

Dated: July 31, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-18586 Filed 8-5-91; 8:45 am]

BILLING CODE 1360-12-M

Deep Seabed Mining; Proposed Extension and Revision of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of receipt of application to extend Deep Seabed Mining Exploration License USA-1 and to revise incorporated exploration plan; request for comments.

SUMMARY: On May 16, 1991, Ocean Minerals Company (OMCO) submitted to the National Oceanic and Atmospheric Administration (NOAA) an application for a five-year extension of Deep Seabed Mining Exploration License USA-1, pursuant to section 105(c)(2) and 107(a) of the Deep Seabed Hard Mineral Resources Act (DSHMRA, 30 U.S.C. 1401 *et seq.*) and 15 CFR 970.515. OMCO has also proposed related exploration plan modifications. NOAA has determined that this proposal constitutes an application for a major but not significant revision to the exploration plan and to the terms, conditions and restrictions (TCRs) of the license under 15 CFR 970.513, and is commencing public review procedures as prescribed in 15 CFR 970.514(b).

Pursuant to the DSHMRA and 15 CFR part 970, on August 29, 1984, NOAA issued a license to OMCO to engage in deep seabed mining exploration activities for a period of 10 years in a site located in the Clarion-Clipperton Fracture Zone of the Northeastern Equatorial Pacific Ocean. Since that time, the licensee, subject to the TCRs of the license and NOAA's regulatory requirements, has diligently pursued the

activities approved in the exploration plan of the license, directed toward application for a commercial permit in 1994.

OMCO is applying for a five-year extension of the license based on significantly changed market conditions, pursuant to 15 CFR 970.515. Section 107(a) of the DSHMRA provides that the Administrator shall extend a license, on terms consistent with the Act and NOAA's regulations, if the licensee has substantially complied with the license and associated exploration plan. Section 105(a)(2) of the DSHMRA authorizes NOAA to approve a license revision upon a finding that the revision will comply with the requirements of the Act and implementing regulations. A revision to the exploration plan of the license is being requested to reflect accomplishment of objectives in OMCO's current plan, due to the substantial amounts of data received by OMCO as a result of conflict resolution, and to reduce the level of activity, based on economic conditions.

OMCO's current ten-year exploration plan, approved by NOAA on September 8, 1988, is a two-phased plan. During the first six years (Phase I) OMCO's work schedule is designed to analyze and integrate exploration data from settlement agreements and other sources, compile environmental data, and identify test sites and candidate sites suitable for commercial mining. Phase II, currently planned for years 7 through 10, is directed toward survey operations, selection of commercial recovery permit areas, and scale-up activities preparatory to filing a permit in conjunction with the investment decision of whether or not to proceed with commercial mining.

Since issuance of the exploration license in 1984, OMCO has resolved all site conflicts with other consortia and the USSR, and exchanged and analyzed related technical data received from these agreements; upgraded computer capability and integrated data into OMCO's exploration database; identified candidate sites within its area suitable for commercial recovery; contributed an area within its site to be used as a joint environmental preservational reference area and released related resource and environmental data to NOAA for evaluation; and monitored technical and legal developments in the metals market.

The May 1991 revision requests an extension of the term of the license until 1999. The amendment to the exploration plan proposes to continue Phase I through year 12 during which the

licensee will continue to monitor technical, legal, economic and political developments in ocean mining; compile environmental data for future mining activities; assess improved exploration methods and techniques for use in Phase II; and perform economic evaluations to determine the advisability of implementing Phase II. Phase II will be scheduled for years 13 through 15. Expenditures are estimated at \$120,000 per annum for years 7 through 10, and \$100,000 for years 11 and 12.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the application for revision and to provide comments by October 7, 1991. These documents may be examined at the below listed address.

FOR FURTHER INFORMATION CONTACT: Betty Rosser, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW., suite 710, Washington, DC 20235, (202) 606-4117.

Dated: July 31, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-18587 Filed 8-5-91; 8:45 am]

BILLING CODE 1360-12-M

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on Draft Amendment 4 to the Gulf of Mexico Reef Fish Fishery Management Plan, which includes modifications to the framework procedure that governs Council action in making annual changes in reef fish management, a 5-year moratorium on issuance of new commercial reef fish permits, combining the deep and shallow-water grouper quotas into an overall quota beginning in 1992, addition of almeco jack and banded rudderfish to the management unit, and applying the same size and bag limits to both greater and lesser amberjacks due to the difficulty in identifying the two species.

DATES: Public comments must be received by September 13, 1991. See "SUPPLEMENTARY INFORMATION" for

dates, times, and locations of the hearings.

ADDRESSES: Written comments should be sent to Douglas Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Gulf of Mexico Fishery Management Council, 813-228-2815.

SUPPLEMENTARY INFORMATION: The public hearings will begin at 7 p.m., and adjourn at 10 p.m., and are scheduled as follows:

1. Monday, August 12, 1991—H.L. Stokely Hall, Ft. Brown Memorial Center Complex, 600 International Boulevard, Brownsville, Texas.

2. Tuesday, August 13, 1991—Galveston Beachfront Hotel, 5914 Seawall Boulevard, Galveston, Texas.

3. Wednesday, August 14, 1991—Gouaux Hall, Nichols State University, Corner of Arcadia and Glenwood, Thibodaux, Louisiana.

4. Thursday, August 15, 1991—Mobile Civic Center, 401 Civic Center Drive, Mobile, Alabama.

5. Wednesday, August 21, 1991—City Hall Auditorium, 300 Municipal Drive, Madeira Beach, Florida.

6. Thursday, 22, 1991—The Reach Hotel, 1435 Simonton Street, Key West, Florida.

Dated: July 31, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 91-18547 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's (Council) Bottomfish Advisory Review Board (BARB), will hold a public meeting on August 6, 1991, beginning at 3 p.m., at the Hawaii Department of Land and Natural Resources, Board Room, 1151 Punchbowl Street, Honolulu, HI.

The BARB will discuss the following agenda items: (1) Any new analyses available and related to limited entry in the Mau Zone of the Northwestern Hawaiian Islands (NWHI); (2) requests by NWHI bottomfish permit holders to fish for bottomfish within the 50 mile longline closure area around the NWHI while having longline gear aboard; (3) a change in observer requirements for the Mau Zone; (4) work assignments and time table for completing 1990 Annual Report on the fisheries; and (5) other business.

For more information contact Kitty M. Simonds, Executive Director, Western

Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: August 1, 1991.

David S. Cerstin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-18590 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Additional Information Regarding Comments for the Advisory Commission on Patent Law Reform

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Public responses to the request for public comments issued by the Advisory Commission on Patent Law Reform on May 16, 1991 (56 FR 22702) will be considered if received by September 3, 1991.

DATES: Written comments received by September 3, 1991, will be considered.

ADDRESSES: Submit written comments to E. R. Kazenske, Executive Assistant to the Commissioner, U.S. Patent and Trademark Office, Box 15, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Jeff Kushan, Commission Specialist, or Paul Salmon, Commission Specialist; U.S. Patent and Trademark Office, Box 15, Washington, DC 20231. Phone: (703) 557-3071.

SUPPLEMENTARY INFORMATION: On May 16, 1991, a notice requesting public comments on the issues to be studied by the Advisory Commission on Patent Law Reform was published in the *Federal Register* at 56 FR 22702. The notice asked that the public comments be received by July 15, 1991. The response to this request has been substantial, and numerous responses have been received after the July 15 response date. The Commission wishes to give notice that it will consider all responses received to date, and any other responses which are received by September 3, 1991.

Dated: July 31, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-18589 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Philippines

July 31, 1991.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs establishing a
limit.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT:
Kim-Bang Nguyen, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce
(202) 377-4212. For information on the
quota status of this limit, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port or
call (202) 535-6735. For information on
embargoes and quota re-openings, call
(202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March
3, 1972, as amended; section 204 of the
Agricultural Act of 1956, as amended (7
U.S.C. 1854).

Inasmuch as consultations have not
yet been held on a mutually satisfactory
solution on Category 350, the United
States Government has decided to
control imports in this category for the
prorated period beginning on May 28,
1991 and extending through December
31, 1991.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 55 FR 50756,
published on December 10, 1990). Also
see 56 FR 11548, published on March 19,
1991.

Ronald I. Levin,

*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

**Committee for the Implementation of Textile
Agreements**

July 31, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: Under the terms of
section 204 of the Agricultural Act of 1956, as
amended (7 U.S.C. 1854), and the
Arrangement Regarding International Trade
in Textiles done at Geneva on December 20,
1973, as further extended on July 31, 1986;
pursuant to the Bilateral Cotton, Wool and
Man-Made Fiber Textiles and Textile

Products and Silk Blend and Other Vegetable
Fiber Apparel Agreement of March 4, 1987, as
amended, between the Governments of the
United States and the Philippines; and in
accordance with the provisions of Executive
Order 11651 of March 3, 1972, as amended,
you are directed to prohibit, effective on
August 7, 1991, entry into the United States
for consumption and withdrawal from
warehouse for consumption of cotton textile
products in Category 350, produced or
manufactured in the Philippines and exported
during the period beginning on May 28, 1991
and extending through December 31, 1991, in
excess of 51,694 dozen¹.

Textile products in Category 350 which
have been exported to the United States on
and after January 1, 1991 shall remain subject
to the Group II limit established for the
period January 1, 1991 through December 31,
1991.

Imports charged to the category limit for
the period February 27, 1991 through May 27,
1991 shall be charged against the level of
restraint to the extent of any unfilled balance.
In the event the limit established for that
period has been exhausted by previous
entries, such goods shall be subject to the
level set forth in this directive.

In carrying out the above directions, the
Commissioner of Customs should construe
entry into the United States for consumption
to include entry for consumption into the
Commonwealth of Puerto Rico.

The Committee for the Implementation of
Textile Agreements has determined that this
action falls within the foreign affairs
exception of the rulemaking provisions of 5
U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

[FR Doc. 91-18628 Filed 8-5-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Historical Advisory Committee

In accordance with section 10(a)(2) of
the Federal Advisory Committee Act
(Pub. L. 92-463), announcement is made
of the following Committee meeting:

Name of Committee: Department of the
Army Historical Advisory Committee.

Date of Meeting: August 21, 1991.

Place: The Pentagon, room 2E807.

Time: 9:30 a.m.-11:30 a.m.

Proposed Agenda: Introduction of
Department of Defense Plan to commemorate
the 50th Anniversary of World War II, 1991-
1995. Summary of Service Plans and 50th
Anniversary of World War II
Commemoration Committee's current
staffing, facilities, planning and focus during
the commemorative period. Discussion of

¹ The limit has not been adjusted to account for
any imports exported after May 27, 1991.

proposed events, activities, projects, and
products.

This meeting is open to the public.
Any interested person may attend,
appear before, or file statements with
the committee at the time and in the
manner permitted by the committee. For
further information, contact Colonel Ron
L. Green, HQDA (SACC), Pentagon,
room 3E524, Washington, DC 20310,
telephone (703) 697-4664.

Ron L. Green,

Colonel, GS, Deputy Director.

[FR Doc. 91-18791 Filed 8-5-91; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Environmental Assessment: ZEST Flight Test Experiments

AGENCY: Strategic Defense Initiative
Organization (SDIO), U.S. Department of
Energy (cooperating agency), U.S.
Department of Navy (cooperating
agency).

ACTION: Environmental assessment for
ZEST flight test experiments.

SUMMARY: The Department of Defense
has prepared a Finding of No Significant
Impact based on an assessment of the
potential environmental consequences
of conducting the ZEST flight test
experiments. These experiments are
designed to demonstrate technologies
associated with high energy release
clouds and their applicability to a
Strategic Defense System.

Background

Pursuant to Council on Environmental
Quality Regulations (40 CFR 1500-1508)
for implementing the procedural
provisions of the National
Environmental Policy Act (42 U.S.C.
4321 *et seq.*), and the U.S. Department of
Defense (DoD) directive 6050.1, the
Strategic Defense Initiative
Organization (SDIO) has conducted an
assessment of the potential
environmental consequences of
launching ZEST flight test experiment
vehicles from Kauai Test Facility (KTF)
on the Pacific Missile Range Facility
(PMRF) on Kauai, Hawaii. This
assessment also includes activities in
the continental United States associated
with the launches. The proposed action
is to design, develop, launch, and
detonate two payloads carrying high
energy explosives. Execution of these
experiments is crucial to further
development of high energy cloud
technology. Also, the data gathered from
the ZEST flights will be employed in the
development of space-based sensors

essential to SDIO's strategic defense effort.

As currently configured, activities involved in the ZEST program include component/assembly ground tests and pre-flight/flight tests. The component/assembly ground tests for the ZEST flight vehicle and payload will be conducted at Orbital Sciences Corporation's Space Data Division (SDD) in Chandler, Arizona, and at Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico. The proposed activities will be conducted in existing facilities and will be within the normal scope of activities that are routinely conducted at those facilities and that are addressed in existing environmental protection and safety procedures at those facilities. No construction will be required and no additional personnel will be needed.

The pre-flight and flight activities will be conducted from the Kauai Test Facility (KTF), a tenant on the Pacific Missile Range Facility (PMRF), on Kauai, Hawaii as part of the continuing operations at KTF. These activities will be conducted at existing facilities, that have been developed specifically for such activities. No construction will be required. Approximately 20 additional contractor personnel and 5 additional government personnel will be required for the ZEST pre-flight and flight tests, over a period of about 45 days.

ZEST vehicles will be launched from KTF launch pad No. 1, which will have an explosive safety quantity distance (ESQD) of 1,250 feet while the booster is on the launch pad. This ESQD will restrict access to recreation area No. 1 at PMRF typically for 2-7, but potentially up to 14 days, per launch. A ground hazard area (GHA) for ZEST with a radius of 2,200 feet will begin to be cleared three hours prior to the launch. This ensures that the GHA will be completely evacuated two hours before the launch when the launch vehicle is armed. A launch hazard area extends 5 nautical miles downrange and is a pie-shaped area, the boundaries of which are tangent to the ZEST GHA at headings of 15 and 300 degrees. The launch hazard area will be maintained from 10 minutes prior to the launch countdown until the rocket has successfully launched and the first stage has separated.

The KTF was elected as the launch site so that the high energy release cloud created by ZEST could be observed by the highly sophisticated sensors at the Air Force Maui Optical Station (AMOS) and the Maui Optical Tracking and Identification Facility (MOTIF) on Mt. Haleakala on Maui, Hawaii. The ZEST experiment trajectory and timeline have

been specifically configured from KTF to obtain maximum coverage of the highest possible quality from AMOS/MOTIF. In addition, the ZEST experiment will be observed and recorded by existing satellites and other ground based sensors. The following SDIO objectives will be achieved by AMOS and other observation modes: validation of the payload design modeling, characterization of the high energy release cloud, and documentation of scientific phenomena that may occur as a result of releasing high energy clouds.

Finding of No Significant Impact

The ZEST flight test experiments were evaluated to determine the potential for significant impacts through an analysis of the activities that would be conducted at the proposed locations, compared to current activities and existing conditions at those locations. The impacts of the proposed action were assessed against the following environmental media: Physical setting and land use; geology and water resources; air quality; noise; biological resources; threatened and endangered species; cultural resources; infrastructure; hazardous materials and waste; and public health and safety.

Potential impacts associated with the proposed ZEST activities will be avoided or minimized through implementation of standard, planned mitigation measures (i.e. through modification of test procedures or through protection of potentially affected resources). These mitigations have been incorporated as an integral part of the ZEST flight test experiments.

Component/assembly ground tests to be conducted at SDD and LANL will use existing facilities and will be within the scope of activities routinely conducted at those facilities. No construction or modification of facilities will be required. Additional personnel will not be necessary. All of the proposed tests will be within the scope of existing environmental protection and safety procedures at SDD and LANL. Therefore, significant environmental impacts are not expected to occur at SDD or LANL.

The pre-flight and flight activities proposed for KTF will be conducted at existing facilities that have been developed specifically for such activities. No construction or modification of facilities will be required. Biological resources, threatened and endangered species, cultural resources and infrastructure will not be adversely affected by the ZEST pre-flight and flight activities at KTF, and the proposed activities are not expected to generate any hazardous

waste. In addition, personnel will be trained and safe operating procedures will be followed when hazardous materials are handled. No environmental impacts are expected off-site of the affected installations.

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have reviewed the ZEST Description of Proposed Actions and Alternatives (DOPAA) and have concurred with the findings of this EA that the project is expected to have little, if any impact on any federally listed endangered or threatened species. The State Historic Preservation Officer (SHPO) has reviewed the ZEST DOPAA and has concurred that the project would not have any impact on cultural or historical resources. The State of Hawaii, Office of State Planning has approved the ZEST flight tests for consistency with Hawaii's Coastal Zone Management regulations.

Potential impacts to land use could result from the imposition of safety zones while the ZEST flight vehicle is on the launch pad. A portion of recreation area No. 1 will be closed during the time the booster is on the launch pad (2-14 days per launch). However, this closure will not present a significant impact to land use due to the short period of time required for the actual launch and the large amount of other beach areas which are readily accessible.

The lead emitted from the first stage Talos booster has the potential to impact the geology and water resources at KTF. The analysis concluded that the lead will have a limited areal impact, adsorb strongly to soil constituents, and be filtered from any runoff as it percolates downward. Therefore, a significant impact to geology and water resources will not result from the proposed action.

The emissions from the solid propellant rocket motors and the detonation products from the high explosive payload have the potential to impact the air quality at KTF. The emission products from the first stage Talos motor will not exceed Hawaiian or National ambient air quality standards and the emissions from the second stage Castor motor will be released well downrange of KTF and will have no effect on ground-level air quality. The detonation products from the high explosive payload will dissociate quickly into compounds which are normally present in the atmosphere and will have a negligible impact on short term and ambient air quality.

The noise generated from the ZEST launch vehicle could potentially impact

humans and wildlife in the area of KTF. This potential will be minimized by ensuring that operations personnel wear hearing protection equipment or remain in the control building to reduce noise levels to acceptable standards. In addition, enforcement of the launch hazard area ensure that unauthorized personnel and public spectators are not exposed to noise levels that exceed allowable standards.

A catastrophic failure of the ZEST flight vehicle on the launch pad or early in the launch trajectory could potentially impact geology and water resources, air quality, and public health and safety.

The potential impacts to geology and water resources and air quality are not expected to be significant because all of the detonation products either occur naturally in the atmosphere and the soils or will readily break down to compounds that exist naturally. Potential impacts to public health and safety from an accidental explosion of the rocket on the launch pad will be mitigated through the implementation of safety zones (1,250 ft ESQD and 2,200 ft GHA), and the monitoring of these areas to prevent unauthorized entry.

Cumulative impacts to air quality, geology and water resources, noise, and land use were evaluated with respect to the projected launch schedule for KTF. It is not anticipated that cumulative impacts will result from a schedule that includes normal KTF operations and the proposed STARS, EDX, and ZEST program launches.

Overall, no significant impacts will result from conducting the ZEST flight test experiments. Therefore, an environmental impact statement (EIS) is not required for the proposed action. The test program will proceed 15 days from the publication of this notice subject to no new substantive issues being identified.

FOR FURTHER INFORMATION CONTACT:

Major Martha J. Cencki (703) 695-8743.

ADDRESSES: Public Affairs Staff Officer, SDIO/IEA, The Pentagon, room 1E1008, Washington DC 20301-7100.

Dated: August 1, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-18573 Filed 8-5-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given

that the Chief of Naval Operations (CNO) Executive Panel Shallow Water Antisubmarine Warfare Task Force will meet 6 August 1991 from 10 a.m. to 5 p.m., in the CNO's Conference room, Pentagon 4E630, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy shallow water antisubmarine warfare long-term strategies. The entire agenda for the meeting will consist of discussions of key issues related to shallow antisubmarine warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing notice to be published in the *Federal Register* at least 15 days before the day of the meeting.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, phone (703) 756-1205.

Dated: August 1, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18569; Filed 8-5-91; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 14, 1991 beginning at 1:30 p.m. in the Struble Room of the Chester County Library, 400 Exton Square Parkway, Exton, Pennsylvania.

Please be advised that parking for this meeting is limited to the adjacent shopping mall parking lot rather than the library's parking facilities. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal conference among the Commissioners and staff will be open

for public observation at 9:30 a.m. at the same location and will include discussions of a CSO study for the upper Delaware Estuary, proposed Clean Water Act amendments, administrative aspects of the Delaware Estuary program, the upper Delaware ice jam project, Scenic Rivers protection proposed rules and golf course water use inventory.

The subjects of the hearing will be as follows:

Proposed Amendments to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Retail Water Pricing to Encourage Conservation. Notice was given in the June 7, 1991 issue of the *Federal Register* that the Commission would hold a public hearing on August 14, 1991 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to retail water pricing to encourage water conservation. The amendments would establish Commission policy and regulations to promote water conserving retail water pricing. The hearing record will remain open for submission of written comments received by September 9, 1991.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *George A. Coombs & Sons D-81-10 Renewal*. An application for the renewal of a ground water withdrawal project to supply up to 15 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Well Nos. 1-6. Commission approval on June 25, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 50 mg/30 days. The project is located in Upper Pittsgrove Township, Salem County, New Jersey.

2. *Hoffmann-LaRoche, Inc. D-85-14 Renewal*. An application for the renewal of a ground water withdrawal of up to 21.6 mg/30 days of water from the applicant's ground water pollution abatement/recovery Well Nos. 8 and 9. Commission approval on March 26, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells and surface water sources remain limited to 120 mg/30 days. The project is located in White Township, Warren County, New Jersey.

3. *Township of Maple Shade D-88-30 CP*. A project that regionalizes sewage treatment within Maple Shade Township, Burlington County, New Jersey. The project involves the conversion of the old 0.6 million gallons

per day (mgd) capacity Main Street Sewage Treatment Plant (STP) into a pumping station to convey raw sewage to the Linwood Avenue STP, designed to provide upgraded treatment and expanded (from 1.0 mgd to 3.4 mgd) capacity. Effluent from the regional STP will be discharged to South Branch Pennsauken Creek via a new outfall structure.

4. *Knights Bridge Corporation D-90-54*. A sewage treatment plant (STP) expansion project to increase the capacity of the existing STP from 0.045 mgd to 0.09 mgd, to serve the growing commercial development of the Villages at Painter's Crossing. The STP is located about 1000 feet northwest of the U.S. Rt. 1 and Rt. 202 intersection and will continue to discharge treated effluent at its outfall on an unnamed tributary to Harvey Run, a tributary of Brandywine Creek. The project is in the Township of Birmingham, Delaware County, Pennsylvania.

5. *Frank Perano Sewage Treatment Plant D-90-63*. A project to expand the existing sewage treatment plant (STP) from 0.036 mgd to 0.062 mgd and serve the projected growth in the applicant's Pleasant Hills Mobile Home Development. The STP will continue to discharge secondary treated effluent to the Schuylkill River. The project is located in Tilden Township, approximately 1000 feet west of the Schuylkill River in Berks County, Pennsylvania.

6. *Rank Ahnert, Inc. D-91-18 CP*. (Subsidiaries: Lehman Pike Development and Outdoor World Corporations). An application for approval of a ground water withdrawal project to supply up to 22.8 mg/30 days of water to the applicant's residential developments of Saw Creek Estates and the Falls at Saw Creek, and also to the campground of Outdoor World/Timothy Lake for existing Well Nos. 1-7, 9 & 10, and 1A-4A, and to limit the withdrawal from all wells to 22.8 mg/30 days. The project is located in Middle Smithfield and Lehman Townships, Monroe and Pike Counties, Pennsylvania.

7. *Lake Wynonah Municipal Authority D-91-20-CP*. An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system for new Well No. 6, and to increase the existing withdrawal limit of 10.5 mg/30 days from all wells to 12 mg/30 days. The project is located in Wayne Township, Schuylkill County, Pennsylvania.

8. *Rank Ahnert, Inc. D-91-23*. (Subsidiary Fernwood, Inc.). A ground water withdrawal project to supply up to 9.8 mg/30 days of water to the

Fernwood Country Club Resort from existing Well Nos. 1-5, and to limit the withdrawal from all wells to 9.8 mg/30 days. The project is located in Middle Smithfield Township, Monroe County, Pennsylvania.

9. *Birmingham Township Sewage Treatment Plant D-91-28 CP*. A sewage treatment plant (STP) project proposed to provide 0.15 mgd tertiary treatment facilities to serve the Township of Birmingham. The STP will be located in Birmingham Township, Chester County, Pennsylvania, just northwest of the intersection of Route 202 and Old Wilmington Pike and will discharge to Radley Run approximately 4.5 miles above its confluence with Brandywine Creek.

10. *BP Oil Company D-91-32 (D)*. A ground water decontamination project that will provide treatment for up to 0.5 mgd to ground water to be withdrawn from eleven proposed wells at the applicant's plant site. The applicant will construct a two-stage powdered activated carbon treatment (PACT) plant to treat the ground water prior to its discharge to the Delaware River, in Water Quality Zone 4, via a new outfall pipe line. The project is located in the Borough of Paulsboro, Gloucester County, New Jersey, with the discharge approximately 2,000 feet downstream of the Mantua Creek confluence.

11. *BP Oil Company D-91-32 (G)*. An application for approval of a ground water withdrawal project of up to 30 mg/30 days of water as part of the applicant's ground water remediation system from Well Nos. Area 3 Sump, R-3, R-4A, R-5A, R-6A, R-7A, R-8, R-9, R-10, R-7, and 51-1A, and to limit the withdrawal from all wells to 30 mg/30 days. The project is located in Paulsboro Borough, Gloucester County, New Jersey.

12. *Exeter Township, Berks County, Authority D-91-37 CP*. A sewage treatment plant (STP) rerating project that entails increasing the rated treatment capacity of the applicant's existing 3.6 mgd tertiary treatment plant to 3.9 mgd. No modifications to the facilities are proposed. Discharge of treated effluent will continue via the existing outfall to the Schuylkill River adjacent to the STP in Exeter Township, Berks County, Pennsylvania.

Proposed Amendment to Water Charging Contract for Philadelphia Electric Company

Pursuant to the provisions of the Delaware River Basin Compact, DRBC Resolution No. 71-4 and section 5-3.2 of Resolution No. 74-6, a proposed supplement to the Agreement between the Commission and Philadelphia

Electric Company for the payment of water charges in connection with the Limerick Generating Station. This contact amendment defines part of the overall charging scheme for water withdrawn from the Point Pleasant Intake for use by the Limerick Generating Station and in particular, for the evaporative loss at the Company's chiller and from Bradshaw Reservoir.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions and Dr. Richard Tortoriello concerning the proposed PECO contract. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 30, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-18566 Filed 8-5-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Office of Defense Programs

Floodplain/Wetlands Involvement Notification; Continued Operations, Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, CA

AGENCY: Department of Energy (DOE).

ACTION: Sitewide floodplain and wetland involvement notification.

SUMMARY: DOE and the University of California (UC) are jointly preparing a sitewide Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for the continued operations of Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories, Livermore (SNL, Livermore) in support of research and development missions established by the Congress and the President. These facilities include the LLNL and SNL sites near Livermore, California and LLNL's Site 300, a largely undeveloped site of approximately 7,000 acres located 15 miles southeast of the Livermore site. Both research facilities are operated for DOE by separate organizations: LLNL is operated by UC; and SNL, Livermore is operated by the Sandia Corporation. The EIS/EIR alternative actions to be addressed are (1) proposed action (continued operation, including near-term proposed projects—within 5 to 10 years; (2) no action (continued operation of existing facilities and research and

development efforts at FY 1992 levels); (3) shutdown and decommissioning; and (4) modification of operations. The EIR alternative considered is the discontinuation of UC's management of LLNL.

Implementation of the proposed action or the alternatives may involve activities located in floodplains and/or wetlands at these sites. Although small wetlands are widely scattered at all sites, floodplains are limited to small ephemeral drainages at the sites. Based on geological information available, there are five floodplains that occur on both sites: Corral Hollow Creek, Middle Canyon, Oasis and Draney Canyon, Arroyo Las Positas, and Arroyo Seco. Maps of the floodplain/wetlands for the LLNL and SNL sites can be obtained from the EIS/EIR Project Office at the address below. Maps for LLNL's Site 300 are currently being prepared and will be available with the draft EIS/EIR. In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetlands assessment for the proposed action and the alternatives. This assessment will be included as an appendix to the draft EIS/EIR. The Statement of Findings for this action will be incorporated into the final EIS/EIR.

DATES: Any comments on the preparation of the floodplain/wetlands are requested by August 21, 1991.

ADDRESSES: Send comments to: DOE EIS/EIR Project Manager, EIS/EIR Project Office, Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, California 94612 or fax comments to (415) 422-7256.

FOR FURTHER INFORMATION CONTACT: Anthony Adduci, EIS/EIR Project Manager, Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, California 94612, (415) 422-0599.

Issued at Washington, DC, this 30th day of July, 1991.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 91-18608 Filed 8-5-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-35-LNG]

Enron Gas Liquids, Inc.; Order Granting Blanket Authorization to Import Liquefied Natural Gas and Granting Interventions

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Enron Gas Liquids, Inc. (EGLI) granting blanket authorization to import up to 200 billion cubic feet (Bcf) of liquefied natural gas from unspecified international sources, subject to any trade restrictions, over a two-year period beginning with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hour of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18609 Filed 8-5-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-31-NG]

Utrade Gas Co.; Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Utrade Gas Company blanket authorization to export to Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 18610 Filed 8-5-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59911; FRL 3940-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91-182, August 6, 1991.

Y 91-183, August 8, 1991.

Y 91-184, August 12, 1991.

Y 91-185, 91-186, August 13, 1991.

Y 91-187, August 12, 1991.

FOR FURTHER INFORMATION CONTACT:

David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91-182

Manufacturer. Confidential.

Chemical. (G) Urethane alkyd resin.

Use/Production. (S) Resin for exterior coating. Prod. range: Confidential.

Y 91-103

Importer. Nissan Chemical America Corporation.

Chemical. (G) Polyacrylic ester.

Use/Import. (G) Paint. Import range: Confidential.

Y 91-184

Manufacturer. Confidential.

Chemical. (G) Crosslinked rubber.

Use/Production. (G) Thermoplastic resin for medical applications and formed/extruded parts. Prod. range: Confidential.

Y 91-185

Manufacturer. Confidential.

Chemical. (G) Adipic acid, polyethylene glycol, terephthalic acid copolymer.

Use/Production. (G) Textile preparation/finishing aid. Prod. range: Confidential.

Y 91-186

Manufacturer. Confidential.

Chemical. (G) Adipic acid, polyurethane glycol, terephthalic acid copolymer.

Use/Production. (G) Textile preparation/finishing aid. Prod. range: Confidential.

Y 91-187

Manufacturer. Estron Chemical, Inc.

Chemical. (G) Polyester.

Use/Production. (S) Powder coating formulation. Prod. range: Confidential.

Dated: July 31, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-18621 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Port of Oakland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-010631-006.

Title: Port of Oakland/Hanjin Shipping Company, Ltd. Marine Terminal Agreement.

Parties:

Port of Oakland
Hanjin Shipping Company, Ltd., as successor to Korea Shipping Corporation, Ltd.

Synopsis: The Agreement, filed July 30, 1991, extends the term of the basic Agreement to December 31, 1991, subject to earlier termination in the event of a further terminal use agreement following completion of earthquake and related repairs at the Seventh Street Marine Container Terminal.

Agreement No: 224-200543-001.

Title: Virginia International Terminals, Inc./Venezuelan Line Terminal Agreement.

Parties:

Virginia International Terminals, Inc. (VIT)
Venezuelan Line (VL).

Synopsis: The Agreement, filed July 30, 1991, provides for the cancellation of Agreement No. 224-200543 by either party upon sixty days prior written notice.

Dated: July 31, 1991.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18544 Filed 8-5-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7a of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070891 AND 071991

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Control Techniques plc, Emerson Electric Co., ICD Drives Inc.	91-1062	07/10/91
Emerson Electric Co., Control Techniques plc, Control Techniques plc	91-1064	07/10/91
Peter Kiewit Sons, Inc., California Energy Company, California Energy Company	91-1124	07/10/91
Semi-Tech (Global) Limited, Emerson Radio Corp., Emerson Radio Corp.	91-1111	07/11/91
Telephone and Data Systems, Inc. Voting Trust, Jeffery P. Massnick, Jeffery P. Massnick	91-1123	07/11/91
Maxus Energy Corporation, Freeport-McMoRan, Freeport-McMoRan Inc.	91-1134	07/11/91
Financial Institutions Insurance Group, Ltd., London United Investments plc, JBR Holdings, Inc.; First Reinsurance Co. of Hartford	91-1136	07/11/91
United Healthcare Corporation, Aurora Health Care, Inc., Samaritan Health Plan Insurance Corporation	91-1090	07/12/91
Super Food Services, Inc., Kentucky Food Stores, Inc., d/b/a Affiliated Foods, Kentucky Food Stores, Inc., d/b/a Affiliated Foods	91-1105	07/12/91
Agip S.p.A., Freeport-McMoRan Inc., Freeport-McMoRan Oil & Gas Company Division	91-1142	07/12/91
General Accident Insurance Company, plc, USLICO Corporation, Hawkeye-Security Insurance Company	91-1143	07/12/91
Transamerica Corporation, Ugo Rista Foundation, First Tank Corporation, Inc.	91-1147	07/12/91
Burelle S.A., Zarn, Inc., Zarn, Inc.	91-1148	07/12/91
PCF Acquisition Company, The McMillen Trust, Occidental Life Insurance Company of North Carolina	91-1155	07/12/91
David A. Bayer, 900 Partners' Investments, GSSA, Inc. or Gensub, Inc.	91-1167	07/12/91
R. Emmett Boyle, Willy R. Strothotte, Ravenswood Aluminum Corporation	91-1166	07/15/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070891 AND 071991—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Nelson Peltz, John B. Turbidity, Trustee for Larabee Wire Manufact. Co., Royal Electric, Inc.	91-1162	07/16/91
MCI Communications Corporation, MCI Services Marketing, Inc., MCI Services Marketing, Inc.	91-1157	07/17/91
Augat Inc., June Collier, National Industries, Inc.	91-1158	07/17/91
Charles A. Long, MCI Services Marketing, Inc., MCI Services Marketing, Inc.	91-1160	07/17/91
Mestek, Inc., Management Investors Voting Trust of Hydrotherm, Inc., Hydrotherm, Inc.; Hydrotherm (Canada), Inc.	91-1115	07/19/91
Equitable Resources, Inc., The Coastal Corporation, ANR Production Company	91-1146	07/19/91
Siemens Aktiengesellschaft, Capital Re Corporation, Capital Re Corporation	91-1163	07/19/91
LVMH Moët Hennessy Louis Vuitton, McDonald's Corporation, McDonald's of Hawaii Development Company	91-1164	07/19/91
Primark Corporation, Arthur Gelb, The Analytic Sciences Corporation	91-1175	07/19/91
Stiftung Hasler Werke, Unisys Corporation, Timeplex, Inc.	91-1179	07/19/91
Unilab Corporation, Thomas H. McConnell, MD., AM Laboratories, Inc.	91-1189	07/19/91

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton,
Contact Representatives, Federal Trade
Commission, Premerger Notification
Office, Bureau of Competition, room 303,
Washington, DC 20580. (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-18581 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3336]

**Zipatone, Inc., et al.; Prohibited Trade
Practices, and Affirmative Corrective
Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Hillside, Ill., based manufacturer of artists' materials from representing that any product containing a Class I ozone-depleting substance will not damage the environment, and from making any unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

DATES: Complaint and Order issued July 9, 1991.¹

FOR FURTHER INFORMATION CONTACT:

Michael Dershowitz, FTC/S-4002,
Washington, DC 20580 (202) 326-3158.

SUPPLEMENTARY INFORMATION: On Tuesday, April 30, 1991, there was published in the Federal Register, 56 FR 19865, a proposed consent agreement with analysis in the Matter of Zipatone, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit

comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended: 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-18582 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9237]

**Wayne Phillips, et al; Proposed
Consent Agreement With Analysis To
Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Wayne Phillips, a Scottsdale, Arizona individual and two companies of which he was an officer, cease and desist distributing the Government Grants commercial and pay consumer redress of \$50,000.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Klurfeld, San Francisco
Regional Office, Federal Trade
Commission, suite 570, 901 Market

Street, San Francisco, CA 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Wayne Phillips, individually and as an officer of Accelerated Systems, Inc., and as an officer of United States Educational Services, Inc.; Accelerated Systems, Inc., a corporation; and United States Educational Services, Inc., a corporation.

**Agreement Containing Consent Order
To Cease and Desist**

This agreement, by and between Wayne Phillips, individually and as an officer of Accelerated Systems, Inc., and as an officer of United States Educational Services, Inc., and Accelerated Systems, Inc., a corporation, and United States Educational Services, Inc., a corporation, hereinafter sometimes referred to as corporate respondents, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. Accordingly,

It is Hereby Agreed: 1. a. Respondent Wayne Phillips is an individual who has been an officer of Accelerated Systems, Inc., and of United States Educational Services, Inc. At all times material to this case, he has formulated, directed, and controlled the acts and practices of

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

the corporate respondents, including the acts and practices alleged in this complaint. He resides at 15608 N. 55th Street, Scottsdale, Arizona, and his principal office or place of business is located at 13610 North Scottsdale Road #10-105, Scottsdale, Arizona 85254.

b. Respondent Accelerated Systems, Inc., is a corporation organized and doing business under the laws of the territory of the Northern Marianas Islands. Its office and principal place of business is located at c/o ICS International, 918 Tower 3, China Hong Kong City, Kowloon, Hong Kong.

c. Respondent United States Educational Systems, Inc., is a corporation organized and doing business under the laws of the State of Nevada. Its office and principal place of business is located at 100 W. Grove Street #360, Reno, Nevada 89509.

2. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

3. Respondents waive:

a. Any further procedural steps;
b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the draft of complaint here attached or have engaged in any other unlawful conduct.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision

containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, *grant* shall mean any money or item of value that is given or awarded without a concomitant obligation to repay or to provide goods or services.

I

It Is Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the "Government Grants" commercial described in the complaint.

II

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses;

B. That it is easy for the average consumer to obtain a grant from federal, state, or local governments to start a small business;

C. That the book *How To Start Your Own Business By Doing Business With The Government* consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business;

D. That the Small Business Innovation Research program provides grants to consumers to start small businesses; or

E. That federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources;

III

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any direct or implied representation concerning:

A. The availability of grants from any source for any purpose;

B. Whether any book or other writing contains information about a particular subject or topic;

C. The terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization;

D. The terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or

E. Any method or technique for starting, operating, or financing any profession or business; unless, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation; provided, however, that whenever respondents represent that any book or other writing contains information about a particular subject or topic, subpart B. shall not be construed to require respondents to possess and rely upon evidence that such information in said book or other writing is true, but only that it is present in said book or other writing.

IV

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as *endorsement* is defined in section 255(b), part 255, title 16, Code of Federal Regulations) unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by respondents.

B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

C. Failing to honor, in a timely manner, any offer or guarantee that, in

connection with the purchase of the product or service, another product or service will be provided to the purchaser as a bonus, prize, gift, award, or promotional item, or will be sold to the purchaser at a reduced or special price.

V

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement.

B. Any commercial or other advertisement for any such product or service longer than fifteen (15) minutes in length that does not display visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"The Program You Are Watching is a Paid Advertisement for [The Product or Service]."

VI

It Is Further Ordered That for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon request make available to the Federal Trade Commission, at a place designated by Commission staff for inspection and copying:

A. All advertisements, promotional materials, documents, or other materials covered by this order;

B. All materials relied on to substantiate any claim or representation covered by this Order;

C. All materials in their possession or control that contradict, qualify, or call into question such representation or the basis on which respondents relied for such representation; and

D. All materials that demonstrate respondents' compliance with this Order.

VII

It Is Further Ordered: A. That respondents shall jointly and severally pay to the Commission as consumer redress the sum of two million one hundred thousand dollars (\$2,100,000.00); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of fifty thousand dollars (\$50,000.00) no later than fifteen (15) days after the date of service of this Order. Such payment shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 901 Market Street, suite 570, San Francisco, California 94103.

B. That, in the event of respondents' default on the \$50,000 payment set forth in subpart A above, the amount of two million one hundred thousand dollars (\$2,100,000.00), less the sum of any payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondents, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. That any funds paid by respondents pursuant to part VII of this Order shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the book "How To Start Your Own Business By Doing Business With The Government," by respondent Wayne Phillips. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. That the Commission's acceptance of this Order is expressly premised upon the respondents' financial statements, depositions, and related documents provided by respondents to the Commission for purposes of this agreement. For a period of ten (10) years from the date of the Commission's acceptance of this Order, or for a period of thirty (30) months after the respondents' last submission of documents as required by part VIII of this Order, whichever period is shorter, after service upon respondents of an

order to show cause, the Commission may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements, depositions, and related documents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the Commission determines that there are any material misrepresentations or omissions in said financial statements and related documents, that determination shall cause the entire amount of monetary liability of two million and one hundred thousand dollars (\$2,100,000.00), less the sum of any payments made under subpart A above, to become immediately due and payable to the FTC, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings instituted under this subpart are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII

It Is Further Ordered That: A. Each respondent shall submit to the Commission copies of all federal tax returns (including but not limited to income tax, gift, estate, partnership, etc.) that the respondent files with the United States Internal Revenue Service for the years 1990 through 1994, inclusive. These submissions shall be made within thirty (30) days of the filing of the returns.

B. If Wayne Phillips does not timely file with the Internal Revenue Service the federal tax returns referenced in subpart VIII.A., he shall submit to the Commission, on a copy of the form attached hereto as exhibit A, a sworn statement describing his assets and liabilities for the tax year involved. For purposes of this subpart, timely filed shall mean within the time period, inclusive of extensions, allowed by the Internal Revenue Service. The filing of sworn statements of assets and liabilities shall not discharge Phillips's obligation to provide the Commission with copies of the federal tax returns referenced in subpart VIII.A. of this Order.

C. If the corporate respondents do not timely file with the Internal Revenue Service the federal tax returns referenced in subpart VIII.A., they shall submit to the Commission, on a copy of the form attached hereto as exhibit B, a

sworn statement describing their assets and liabilities for the tax year involved. For purposes of this subpart, timely filed shall mean within the time period, inclusive of extensions, allowed by the Internal Revenue Service. The filing of sworn statements of assets and liabilities shall not discharge the corporate respondents' obligation to provide the Commission with copies of the federal tax returns referenced in subpart VIII.A. of this Order.

D. Annually, for five (5) years after the date of service of this Order, respondent Wayne Phillips shall, within ninety (90) days of the request, provide sworn answers to such written questions regarding his finances, assets and liabilities and their sources as the staff of the Commission may pose.

IX

It Is Further Ordered That the respondents shall, for five (5) years from the date of entry of this Order, distribute a copy of this Order to each present and future managerial employee.

X

It Is Further Ordered That respondents Accelerated Systems, Inc. and United States Educational Services, Inc. shall notify the Commission, at least thirty (30) days prior to the proposed change, of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

XI

It Is Further Ordered That respondent Wayne Phillips, for a period of five (5) years from the date of service of this Order, shall promptly notify the Commission, in writing, of his new affiliation with any business or employment that engages in any act or practice covered by any provision of this Order. For each such new affiliation or employment, the notice shall include the name and address of the new business or employment, and a description of respondent's duties and responsibilities.

XII

It Is Further Ordered That respondents shall, within sixty (60) days after service of this Order upon them and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in

which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed Consent Order from Wayne Phillips, Accelerated Systems, Inc. ("ASI"), and United States Educational Services, Inc. ("USES") (collectively, "the respondents").

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the program-length advertisement for a book, *How to Start Your Own Business by Doing Business With the Government* (the "government grants commercial"), which purportedly instructs consumers how to obtain government grants to start small businesses. ASI is incorporated in the Northern Marianas Islands, and USES is a Nevada corporation. Wayne Phillips allegedly formulated, directed, and controlled the acts and practices of both corporations, as they relate to the Complaint.

The Commission's Complaint alleges that the commercial contains six false and misleading representations concerning the availability of government grants to start small businesses. The creation and dissemination of this commercial is alleged to be an unfair or deceptive act or practice in violation of Section 5(a) of the Federal Trade Commission Act.

The Complaint alleges that the respondents made the following misrepresentations:

That there is \$33 billion in grants available from federal, state, and local governments to start small businesses;

That it is easy for the average consumer to obtain a grant to start virtually any type of small business;

That the government grants book consists primarily of information on how average consumers can easily obtain grants from federal, state, and local governments to start virtually any kind of small business;

That the Small Business Innovation Research ("SBIR") program provides grants to consumers to start virtually any kind of small business, and that

average consumers can obtain a \$25,000 grant from the SBIR program to start a small business quickly and easily;

That federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources;

That the success stories in the commercial were true, and illustrated and substantiated that the information provided in the government grants book has been used successfully by average consumers to start small businesses; and

That every purchaser of the government grants book would receive, in a timely manner and at no additional cost, the Grant Alert Service, which consists of information to alert consumers promptly and preferentially of the availability of government grants in their geographic area;

The Complaint also alleges that the representation regarding the Grant Alert Service was an unfair practice.

The Consent Order is designed to remedy the advertising violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the order prohibits the selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the government grants commercial described in the complaint.

Part II of the Order prohibits the respondents from representing in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service that: (1) There is \$33 billion in grants available from federal, state, and local governments to start small businesses; (2) it is easy for the average consumer to obtain a grant from federal, state, or local governments to start a small business; (3) the book *How To Start Your Own Business By Doing Business With The Government* consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business; (4) the SBIR program provides grants to consumers to start small businesses; or (5) federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources.

Part III of the Order requires the respondents to possess and rely upon competent and reliable evidence to substantiate any representation in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service concerning: (1) The availability of grants

from any source for any purpose; (2) whether any book or other writing contains information about a particular subject or topic; (3) the terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization; (4) the terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or (5) any methods or techniques for starting, operating, or financing any profession or business. The order states that part III shall not be construed to require the respondents to possess and to rely on competent and reliable evidence that any representations made in the book or other writing are true.

Part IV of the Order prohibits the respondents from using, publishing, or referring to any endorsement, as "endorsement" is defined by 16 CFR 255(b), in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, unless they have good reason to believe that the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by the respondents. The respondents also are prohibited from representing that any endorsement of a product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case. Part IV of the Order also prohibits the respondents from failing to honor a promise to provide a bonus or a gift to the purchaser of a product or service.

Part V of the order prohibits the respondents from creating, producing, selling, or disseminating any commercial that misrepresents that it is an independent program and not a paid advertisement. In any commercial or other advertisement that is more than fifteen (15) minutes in length, the following disclosure must appear:

"The Program You Are Watching is a Paid Advertisement for [The Product or Service]."

This disclosure must appear visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service.

Part VI of the Order requires the respondents to retain records, and copies, of materials covered by the Order, for a period of three years.

Part VII of the Order requires the respondents to pay the sum of \$2,100,000

as consumer redress. These funds are to be used by the Commission to pay redress to consumers injured by the practices challenged in the complaint. If the Commission finds that consumer redress is not practicable, then the funds shall be paid to the United States Treasury in lieu of redress. This liability is to be suspended on the payment by the respondents of \$50,000, provided, however, that respondents: Do not default in this payment; and (2) have not misrepresented their financial condition. If either of these occurs, the entire \$2,100,000 will then be due and payable.

Part VIII of the Order requires the respondents to provide the Commission with all federal tax returns for the years 1990 through 1994. In the event that those tax returns are not timely filed, the respondents must file sworn statements of assets and liabilities with the Commission. Part VIII of the Order also requires Wayne Phillips to provide sworn answers, for a period of five years, to such questions regarding his finances, assets and liabilities, as the staff of the Commission may pose.

Parts IX through XII of the Order are standard order provisions requiring the respondents to retain records demonstrating their compliance with the Order; to distribute the Order to their managerial employees; to notify the Commission of any changes in the structure of the corporations or of Phillips's new affiliation with businesses that make commercials covered by the Order; and to report to the Commission their compliance with the terms of the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 91-18585 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 891 0086]

Sentinel Group, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require,

among other things, a Stamford, Connecticut, based corporation to divest one of its funeral homes in each of three separate markets and to obtain Commission approval, for a period of ten years, before acquiring any additional funeral homes in these and three other markets.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, GA 30367, (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Sentinel Group, Inc., a corporation, and it now appearing that Sentinel Group, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing a Consent Order,

It Is Hereby Agreed by and between Sentinel Group, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sentinel Group, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, in the City of Stamford, State of Connecticut.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands

that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

As used in this order, the following definitions shall apply:

(a) *Sentinel* means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns and their respective directors, officers, employees, agents and representatives.

(b) *Funeral home* means a facility devoted to the care or preparation for burial or transportation of deceased human bodies, and a facility in which funeral services may be conducted.

(c) *Properties to be Divested* means the funeral home properties described in Paragraph II.

(d) *Commission* means the Federal Trade Commission.

It Is Ordered That, within twelve (12) months after the date this order becomes final, Sentinel shall divest, absolutely and in good faith, the following funeral homes: Mincy-Fulford Funeral Home in Waycross, Georgia; Ward's Funeral Home in Gainesville, Georgia; and Erwin-Pettit Funeral Home in Summerville, Georgia. These funeral homes are hereinafter referred to as the "Properties to be Divested". The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receive the prior approval of the Commission. The purpose of the divestiture required by this Order is to insure the continuation of the funeral homes as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III

It Is Further Ordered That, pending divestiture, Sentinel shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal or impairment of any assets or business of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV

It Is Further Ordered That the Properties to be Divested shall not be divested, directly or indirectly, to anyone who is at the time of the

divestiture an officer, director, employee or agent of, or under the control, direction or influence of Sentinel.

V

It Is Further Ordered That: (A) If Sentinel has not divested the Properties to be Divested as required by Paragraph II within twelve (12) months after the date this Order becomes final, Sentinel shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Sentinel shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Sentinel to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph V.(A) of this Order, Sentinel shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Sentinel, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *Provided, however,* That the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or

any other relevant information, as the trustee may reasonably request. Sentinel shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Sentinel shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Sentinel shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Sentinel's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II of the Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in Paragraph II; *Provided, however,* That if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Sentinel from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Sentinel, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Sentinel, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Sentinel and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Sentinel shall indemnify the trustee and hold the

trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Sentinel shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to Sentinel and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI

It Is Further Ordered That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Sentinel has fully complied with Paragraph II of this Order, Sentinel shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Sentinel shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Sentinel also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and

recommendations concerning the required divestiture.

VII

It Is Further Ordered That, for a period of ten (10) years after the date this Order becomes final, Sentinel shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Waycross, Georgia; (b) Summerville, Georgia; (c) Gainesville, Georgia; (d) Rome, Georgia; (e) Savannah, Georgia; and (f) Ft. Smith, Arkansas; *Provided, however*, That this prohibition shall not apply to the construction of new facilities by Sentinel.

VIII

It Is Further Ordered That, one year after the date this Order becomes final and annually thereafter for nine (9) years, Sentinel shall file with the Commission a verified written report of its compliance with Paragraph VII of this Order. Such reports shall include a listing of all acquisitions made by Sentinel during the 12 months preceding the date of the report.

IX

It Is Further Ordered That, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to Sentinel made to its principal office, Sentinel shall permit any duly authorized representative or representatives of the Commission:

(A) Access during the office hours of Sentinel, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Sentinel relating to compliance with this Order;

(B) Upon five (5) days' notice to Sentinel and without restraint or interference from them, to interview officers or employees of Sentinel, who may have counsel present, regarding any such matters.

X

It Is Further Ordered That Sentinel shall notify the Commission at least thirty (30) days prior to any proposed change in its organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that

may affect compliance obligations arising out of this Order.

Concurring Statement of Commissioner Azcuenaga

Sentinel Group, Inc., File No. 891 0086

I concur in part with and dissent in part from the decision of the Commission majority to accept this proposed consent order from Sentinel Group, Inc. for public comment. The proposed order remedies the potential anticompetitive effects of Sentinel's acquisitions of funeral homes in some, but not all, of the affected communities. Based on the information available concerning the level of concentration, conditions of entry, and other circumstances relevant to the state of competition in the funeral services market, the Commission should require additional divestitures in order to restore competition in more localities affected by Sentinel's acquisitions. I would welcome comment on the scope of the divestiture provision.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Sentinel Group, Inc. ("Sentinel").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that, by purchasing two funeral homes in each of the following relevant geographic markets: Gainesville, Georgia and its immediate environs; Waycross, Georgia and its immediate environs; Summerville, Georgia and its immediate environs; Savannah, Georgia and its immediate environs; and Ft. Smith, Arkansas and its immediate environs, and by purchasing three funeral homes in Rome, Georgia and its immediate environs, Sentinel violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The effects of the acquisitions may have been to substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between Sentinel and others in the relevant markets; and (2) by significantly enhancing the possibility of collusion or interdependent coordination

among the remaining firms in the relevant markets. These effects increase the likelihood that firms have increased prices and restricted output in the relevant markets or will increase prices and restrict output both in the near future and in the long term.

The proposed order requires Sentinel to divest one funeral home in Waycross, one funeral home in Summerville, and one funeral home in Gainesville. In addition, the proposed order requires that, for a period of ten (10) years after the order becomes final, Sentinel shall cease and desist from acquiring any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of Waycross, Summerville, Gainesville, Savannah, Rome, or Ft. Smith without the prior approval of the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-18583 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911 0087]

Service Corporation International; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Houston, Texas, based corporation to divest six funeral homes and to obtain prior Commission approval, for a period of ten years, before acquiring any additional funeral homes in certain Georgia and Tennessee areas.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine B. Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, GA 30367, (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the voting securities of Sentinel Group, Inc., ("Sentinel") by Service Corporation International, a corporation hereinafter sometimes referred to as "proposed respondent" or "SCI," and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to divest certain assets and cease and desist from certain acts,

It Is Hereby Agreed by and between proposed respondent, its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;
b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. Counsel for the Federal Trade Commission agree that the Agreement Containing Consent Order in Sentinel Group, Inc., File No. 891 0086, shall be submitted to the Commission for its consideration prior to or contemporaneously with this agreement.

Order

I.

As used in this order, the following definitions shall apply:

A. *SCI* or *respondent* means Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. *Sentinel* means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. *Funeral establishment* means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. *Assets and Businesses* include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of each funeral establishment with the exception that the trade name "Chattanooga Funeral Home" need not be included;

4. All right, title and interest in the legal name "Lane Funeral Homes, Inc." within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park ("Park"), thence easterly along the extension of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turning northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, thence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;

5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and

6. All books, records and files pertinent to any of the Properties to be Divested.

E. Properties to be Divested means the Assets and Businesses of the following funeral establishments:

1. Chattanooga Funeral Home, West Chapel, Chattanooga, Tennessee.
2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.
3. Lane Funeral Homes, Inc., Valley View Chapel, Chattanooga, Tennessee.
4. Lane Funeral Homes, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.
5. Wallis & Son Funeral Home, LaFayette, Georgia.
6. Sipple's Mortuary, Savannah, Georgia.

II

It Is Ordered That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continuation of the funeral establishments as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III

It Is Further Ordered That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV

It Is Further Ordered That: A. If respondent has not divested the Properties to be Divested as required by section II within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to section 5(1)

of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Section shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to section IV.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *Provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this section in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in section II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in section II; *Provided, however*, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in section IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It Is Further Ordered That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in Sentinel Group, Inc., File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

VI

It Is Further Ordered That respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

VII

It Is Further Ordered That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with section II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this

order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

VIII

It Is Further Ordered That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; and (d) Savannah, Georgia; *Provided, however*, that this prohibition shall not apply to the construction of new facilities by respondent.

IX

It Is Further Ordered That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of section VIII. hereof and of paragraph VII. of the "Agreement Containing Consent Order" that is referred to in section V. hereof, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *Provided, however*, that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the interest is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

X

It Is Further Ordered That, one year after the date this order becomes final and annually thereafter for nine (9) years, respondent shall file with the Commission a verified written report of its compliance with sections VIII. and IX. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations' addresses, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

XI

It Is Further Ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

XII

It Is Further Ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914,

15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on or about April 5, 1991, SCI entered into an Agreement and Plan of Merger with Sentinel Group, Inc. ("Sentinel"), in which (1) SG Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Sentinel; (2) Sentinel shareholders would receive SCI common stock; and (3) SCI would become the sole shareholder of Sentinel (hereinafter the "Acquisition"); and

Whereas, both Sentinel and SCI own funeral establishments that provide funeral services to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (the SCI Consent Agreement), attached hereto as exhibit A, the Commission must place the order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, if the Commission accepts the Agreement Containing Consent Order dated April 11, 1991 between Sentinel and Commission staff (Sentinel Consent Agreement), attached hereto as exhibit B, the Commission must place the Sentinel order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante and holding separate the assets and businesses of certain Sentinel funeral establishments listed in exhibit C attached hereto and made a part hereof (hereinafter Hold Separate Assets) until the divestitures contemplated by the SCI Consent Agreement and the Sentinel Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, if the Commission finally accepts the order contained in the SCI Consent Agreement, SCI agrees, for a period of 10 years after the date the order becomes final, to notify the Commission of the acquisition, by default or foreclosure proceedings, of any interest in a funeral establishment

in nine specified geographic areas and to hold such funeral establishment separate until such time as the Commission approves the acquisition or the interest is divested; and

Whereas, the purposes of this Agreement are to: (1) Preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI Consent Agreement and the Sentinel Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments required by the SCI Consent Agreement and the Sentinel Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the SCI Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI Consent Agreement to which it is annexed and made a part thereof and any order issued against SCI or Sentinel, as follows:

1. SCI agrees to execute and be bound by the attached SCI Consent Agreement.

2. SCI agrees that, from the date this Agreement is accepted until the first to occur of (i) ten business days after the Commission withdraws its acceptance of the SCI Consent Agreement pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) until the date the divestitures required by the SCI order and the Sentinel order are accomplished, SCI shall hold the Hold Separate Assets separate and apart on the following terms and conditions and for the periods set forth in exhibit C:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate financial statements for the Hold Separate Assets and shall provide the Commission with quarterly and annual financial statements for each funeral establishment within ten days of their availability.

g. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

h. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business, and SCI may sell or otherwise dispose of assets, property or business to accomplish the divestitures required by any order issued against SCI or Sentinel.

3. The parties agree that if the Commission finally approves and issues the order in the SCI Consent Agreement, this Agreement shall remain in effect until ten (10) years after the date said order becomes final.

4. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Sentinel stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Sentinel that it may hold, or to seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

5. In the event the Commission has not finally approved and issued the SCI order within one hundred twenty (120) days of its publication in the *Federal Register*, SCI may, at its option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that SCI has entered into in this matter.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, SCI shall make available to any duly authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days notice to SCI, and without restraint or interference from SCI, officers or employees of SCI, who may have counsel present, for interviews regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Service Corporation International (SCI).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that, SCI's acquisition of Sentinel Group, Inc., violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and

section 7 of the Clayton Act, as amended, 15 U.S.C. 18. In the relevant geographic markets of Savannah, Georgia and its immediate environs; LaFayette, Georgia, and its immediate environs; and Hamilton County, Tennessee, and Rossville and Fort Oglethorpe, Georgia, both SCI and Sentinel own funeral establishments and are actual competitors in the provision of funeral services. In the Savannah, Georgia area, Sentinel is the largest firm and SCI is one of the leading firms in the provision of funeral services. In the Hamilton County, Tennessee and Rossville and Fort Oglethorpe, Georgia area, Sentinel and SCI are the two largest firms in the provision of funeral services. In the LaFayette, Georgia area, Sentinel and SCI are the only two providers of funeral services.

The effects of the acquisition may have been to substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between SCI and Sentinel in the relevant markets; and (2) by significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets. These effects increase the likelihood that firms have increased prices and restricted output in the relevant markets or will increase prices and restrict output both in the near future and in the long term.

The proposed order requires SCI to divest one funeral establishment in Savannah, Georgia; one funeral establishment in LaFayette, Georgia; and three funeral establishments in Chattanooga, Tennessee and one funeral establishment in Soddy Daisy, Tennessee. In addition, the proposed order requires that, for a period of ten (10) years after the order becomes final, SCI shall cease and desist from acquiring any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of Savannah, LaFayette, Chattanooga or Soddy Daisy without the prior approval of the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-18534 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 168]

Project Grants for Community Based Organizations Immunization Program

Introduction

The Centers for Disease Control (CDC) announces the availability of project grant funds in Fiscal Year 1991 to develop collaborative efforts with Community Based Organizations (CBOs) to enhance the consumer demand and service delivery of vaccine.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under the Public Health Service Act 317(k)(3) (42 U.S.C. 247b(k)(3)), as amended. Regulations governing the implementation of this legislation are covered under 42 CFR part 51b, subparts A and B.

Eligible Applicants

Eligible applicants for this program are the official public health agencies who are current recipients of project grants for Preventive Health Services-Immunization. Funds will be focused where the problem has been demonstrated to be most severe. Eligibility is limited to programs targeting high-risk, underserved inner-city residents in metropolitan areas with populations of at least 250,000 where preschool children are experiencing high incidence rates of measles and other vaccine-preventable diseases, or in which immunization coverage in preschool children has been shown to be low. Specific criteria for eligibility include a city or county or other urban population with either documented incidence of measles in preschool children (less than five years of age) of greater than or equal to 20 per 100,000 over the last five years (1986-1990 or similar interval updated to present), or demonstrated age-appropriate vaccination coverage of less than 50% for all recommended vaccines by the second birthday.

Availability of Funds

The Centers for Disease Control (CDC) is making available approximately \$400,000 in Fiscal Year 1991 to supplement two immunization program grants.

A substantial portion of these funds must be used to subcontract with CBOs to carry out activities that include, (1) working with CBOs that deliver immunization services (e.g., neighborhood health center or community health center) and, (2) working with consumer groups to increase the demand for immunization services through such activities as information and education campaigns and community outreach.

Purpose

The purpose of the CBO Demonstration Program is to develop a collaborative effort between health departments and CBOs to enhance the consumer demand and service delivery of vaccines.

Program Requirements

CDC staff may provide, upon request, technical assistance in the development and implementation of the demonstrations.

A. Activities

The recipients will select up to 2 non-profit CBOs which are capable of conducting such a project. Since there are many different types of CBOs, potential projects may vary widely. To be considered, a CBO must have prior experience with and be able to demonstrate successful management of health programs (including successful delivery of health services in defined geographic communities or clearly defined segments of communities), be able to target families with preschool-age children who are inadequately vaccinated, and be located within a municipal area of 250,000 or greater population in which there has been an increased incidence of measles since 1986 among children aged 5 years or less, or where age-appropriate vaccine coverage is 50% or less. Two general types of programs may be proposed: a project designed to increase utilization of immunization services in an existing public health clinic (e.g., city or county well-child clinic, maternal and child health clinic, WIC clinic) (Option A), and a program designed to increase the level of immunization services provided within a community (i.e., provided directly by the CBO such as a neighborhood or community health center) (Option B). A third possibility (Option C) is a proposal that combines

elements of Options A and B. A proposal that is limited to Option A, increasing utilization of existing services for immunization, must include assurances that those services will be able to accommodate the additional number of children seeking vaccination. All proposed actions/activities should be described in sufficient detail to indicate how they will ultimately improve coverage.

Under either option, the proposal should be structured around specific, measurable program objectives, a clearly outlined timetable and a specific plan for evaluating the program's effectiveness.

Proposals may include but are not limited to the following:

1. Option A (Increasing demand for vaccinations)
 - a. Working with health service clinics, providers, etc. to increase demand for immunization services by informing them of community attitudes towards health services and the major difficulties which the high-risk population(s) face in obtaining comprehensive health care.
 - b. Providing community health education about the importance of age-appropriate immunizations (via, e.g., mass media, targeted media).
 - c. Utilizing existing community outreach mechanisms to encourage families to make and keep vaccination appointments.
 - d. Building support systems within neighborhoods to make it easier for families to make clinic visits (e.g., helping with transportation, child care).
 - e. Using home visitors to find children who need vaccinations.
 - f. Linking with neighborhood/community services and/or beneficiary programs for referral of preschool-age children to health providers.
2. Option B (Increasing vaccination services)
 - a. Working with CBOs that operate community health centers to implement the clinic immunization practices.
 - b. Opening satellite immunization clinics in part of the intervention area which is underserved.
 - c. Developing and distributing or broadcasting messages on the importance, safety and efficacy of immunizations.
3. Option C (Increasing demand and level of services by combining elements of Options A and B).

B. Evaluation Methodology

A detailed and specific plan for evaluating the program and measuring its effect upon vaccination rates for preschool children (less than or equal to 24 months of age) must be included in the proposal.

Program effectiveness may be assessed through several means, including but not limited to:

1. Process Measures

a. Doses of vaccine administered before and during the intervention program to preschool-age children in the target population.

b. Increases in the numbers of preschool-age patients seeking vaccinations from community clinics and other vaccine providers.

c. Changes in clinics policies for vaccination (use of standing orders, "fast-track" vaccination services, etc.) and the effect on reducing waiting times and other barriers to service delivery.

2. Direct Assessment

a. Projects may wish to collaborate with schools of public health to develop and implement plans for program evaluation.

b. Systematic pre- and post-project assessment audits of clinic medical charts and vaccination records for missed opportunities, appropriate observance of contraindications and timeliness of vaccinations.

c. Pre- and post-project assessment of vaccination related knowledge, attitudes and practices among target community residents or persons attending community health care providers.

d. Pre- and post-project assessment of vaccine provider knowledge, attitudes and practices regarding vaccination.

e. Pre- and post-project surveys of the target community for vaccine coverage levels.

f. The assessment plan included in the proposal must include community clinic record audits along with at least one other formal assessment, and at least two process measures.

Evaluation Criteria

Applicants will be evaluated on an individual basis according to the following criteria:

A. The applicant's understanding of the purpose of the program, the appropriateness and feasibility of the project and the potential for positive impact of the project on meeting the stated goals of the program. (10 points)

B. The extent to which background information and other data demonstrate that the applicant has existing links with the community and has been previously successful in reaching high-risk population(s); the appropriate organizational structure; administrative support; and accessibility to immunization records of the target population. (10 points)

C. The degree to which long- and short-term objectives are consistent with the purpose of the demonstration project and are realistic, specific, measurable, and time-phased. (10 points)

D. The quality of the plan of operation for conducting and monitoring proposed activities and the degree to which the plan specifies the what, who, where, how, and the timing for start and completion of each activity. (25 points)

E. The degree to which the evaluation plan will be able to measure achievement of each objective and the quality of the methods and instruments to be used. (25 points)

F. The extent to which methods and strategies proposed are financially feasible and transferable to other states or counties. (10 points)

G. The extent to which qualified and experienced personnel are available to carry out the proposed activities of the project. (10 points)

In addition, consideration will be given to the extent to which the budget request is clearly explained, adequately justified, reasonable, consistent with the intended use of funds, and the extent to which the applicant is contributing its own resources to childhood immunization activities.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. A current SPOC list is included in the application kit. On or before September 26, 1991, the SPOC should send any state process recommendations to: Edwin L. Dixon, Grants Management Officer, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, ATTN: Eddie L. Wilder. CDC does not guarantee to "accommodate or explain" for state process recommendations it receives after September 26, 1991.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.268, Preventive Health Services-Immunization.

Other Requirements

Data collection initiated under this grant has been approved by the Office of Management and Budget under number 0920-0106, Title: "Preventive Health and Health Services Grant Reporting Requirements," expiration date September 30, 1991. (A request for extension of this information collection is currently in process.)

Application Submission and Deadline

The original and two copies of the application (form PHS 5161-1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, on or before August 23, 1991.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Sent on or before the deadline date and received in time to submit to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

B. *Late Applications:* Late applications will not be considered in the current funding cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Eddie L. Wilder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640.

Programmatic technical assistance may be obtained from Rick Nelson, Program Services Branch and Gail King, Surveillance Investigations and Research Branch, Division of Immunization, National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1284 or FTS 236-1284.

Please refer to Announcement 168 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report;

Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: July 31, 1991.

Robert L. Foster,
Acting Director, Office of Program Support
Centers for Disease Control.

[FR Doc. 91-18553 Filed 8-5-91; 8:45 am]

BILLING CODE 4150-18-M

Public Health Service

National Toxicology Program; Call for Public Comments, Chemicals Proposed for Eighth Annual Report on Carcinogens

Background

The National Toxicology Program (NTP) requests comments on actions which the Program plans to take with regard to the Eighth Annual Report on Carcinogens. The report is a Congressionally-mandated listing of certain carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services. The pertinent provision of Public Law 95-622 requires an Annual Report which contains "a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed . . ." The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk of public health from exposure to these chemicals.

The proposed new entries for the Eighth Report have undergone a multiphased peer review process involving a variety of Federal research and regulatory agencies. All evidence of carcinogenicity of the proposed new entries was peer reviewed by scientists of either the International Agency for Research on Cancer (IARC) or the Technical Reports Review Subcommittee of the NTP Board of Scientific Counselors before the chemicals were considered for selection. All data relevant to the criteria for inclusion of candidate substances in the Annual Report have been evaluated by the two scientific review committees which develop the list of proposed additions to these reports. This notice is being published to provide for appropriate public comment to

supplement these selection and review processes.

Proposed Actions

In the Eighth Annual Report on Carcinogens, the National Toxicology Program is proposing the addition of 8 substances to the existing listing of substances "reasonably anticipated to be carcinogens." These chemicals are listed in the Appendix with their Chemical Abstract Services (CAS)

Registry numbers and references. The Program seeks public comment on this action, including information and data pertaining to these substances. There are no substances proposed for addition to the list of substances known to be carcinogens.

Submission of Comments on the Eighth Annual Report

Comments on the actions proposed for the Eighth Annual Report on

Carcinogens will be accepted for a period of 45 days from date of publication of this announcement in the **Federal Register**. Comments should be sent to the National Toxicology Program Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Kenneth Olden,
Director.

APPENDIX.—SUBSTANCES PROPOSED FOR THE EIGHTH ANNUAL REPORT ON CARCINOGENS REASONABLY ANTICIPATED TO BE CARCINOGENS

CAS Nos.	Substance	NTP technical reports	IARC Vol.
95-69-2 1165-93-3	p-Chloro-o-toluidine and its hydrochloride salt	165	48(1990)
42397-64-8	1, 6-Dinitropyrene		46(1989)
42397-65-9	1, 8-Dinitropyrene		46(1989)
2475-45-8	Disperse Blue 1	299	48(1990)
110-00-9	Furan	402	
7496-02-8	6-Nitrochrysene		46(1989)
5522-43-0	1-Nitropyrene		46(1989)
57835-92-4	4-Nitropyrene		46(1989)

[FR Doc. 91-18627 Filed 8-5-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-014-00-6334-12; G1-299]

Emergency Closure of Public Lands; Oregon

July 26, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately the public lands legally described below are closed seasonally to any public access:

The Salt Caves, located on the south bank (river left, River Mile 211.7) of the upper Klamath River, T. 41 S., R. 6 E., W.M., Sec. 8: SW 1/4 NW 1/4 SW 1/4. The closure applies to the caves and extending 25 feet in front of the entrances.

This closure will be in effect from July 26, to September 15, 1991. Thereafter the seasonal closure will be in effect May 1 through September 15 annually until completion of the Klamath Falls Resource Area RMP. The only exception to the closure would be for special authorized administrative use and emergency needs.

The closure is intended to protect a maternity colony of the Townsend's big-eared bat during its normal birthing and

brood-rearing period. Townsend's big-eared bat is currently listed as a Category 2 Candidate species. This listing identifies those species which are being considered for addition to the list of endangered or threatened wildlife under the Endangered Species Act. While Category 2 species do not receive the protection of listed species, it is the Bureau of Land Management's policy to manage its lands in a manner which may prevent listing this species as threatened or endangered.

The authority for this closure is 43 CFR 8364.1 and any person who violates this closure notice may be subject to a maximum fine of \$1,000 and/or imprisonment not to exceed 12 months in accordance with 43 CFR 8360.0-7.

FOR FURTHER INFORMATION CONTACT: Gayle Sitter, Klamath Falls Resource Area, 2795 Anderson Ave., Bldg. 25, Klamath Falls, Oregon 97603. (Telephone (503) 883-6916).

A. Barron Bail,

Area Manager.

[FR Doc. 91-18565 Filed 8-5-91; 8:45 am]

BILLING CODE 4310-33-M

[WY-920-01-4120-14]

Powder River Regional Coal Team; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Powder River Regional Coal Team Activities: announcement of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) will hold a public meeting on September 6, 1991 for the following purposes: (1) Review the approved Leasing by Application (LBA) guidelines, (2) review pending coal applications in the Powder River Coal Region, (3) discuss decertification of the Powder River Coal region.

DATES: The RCT will meet at 9 a.m. MDT on September 6, 1991 at the Holiday Inn, Cheyenne, WY 82007. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Holiday Inn, 204 West Fox Farm Road, in the Shoshone Room, Cheyenne, Wyoming 82007, telephone (307) 638-4466. Attendees of this meeting may wish to make their personal room reservations from a block of rooms which has been set aside until two weeks prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Eugene A. Jonart, Wyoming State Office, Attn: (925), P.O. Box 1828, Cheyenne, Wyoming 82003, telephone (307) 775-6250, or (FTS) 329-6250.

SUPPLEMENTARY INFORMATION: One purpose of the meeting is to review the guidelines as recommended by the RCT in 1990 and approved by the Director of the Bureau of Land Management (BLM). The RCT will also discuss the Wyoming

BLM's project management strategy for handling the coal lease application backlog in the Powder River Basin. The backlog consists of the following five (5) Lease by Applications (LBAs): Jacob's Ranch (WYW117924), West Black Thunder (WYW118907), North Antelope (WYW119554), Rochelle (WYW119555), and West Rocky Butte (WYW122586). Public Notification of each of the above pending applications, in accordance with the Powder River Operational Guidelines, was printed in the *Federal Register*, on either June 13, 1990 or January 18, 1991. Most of the pending applications have been applied for in order to maintain existing mining operations. Because of the amount of coal in several tracts, however, the RCT (in accordance with the Guidelines), will consider the possibility of new mine starts in the region: The West Black Thunder Tract could be a possible new mine start, although it was applied for by the Thunder Basin Coal Company as a maintenance tract; and the West Rocky Butte Tract, which would require a new mine start. Generally, a coal lease application filed under the LBA portion of the regulations (43 CFR part 3425) can be processed to the lease sale stage by BLM within one and a half and two years, depending on informational and environmental study requirements.

The RCT will also review their recommendation to decertify. The basis for a recertification recommendation will include current market conditions, current level of interest, regional environmental and socioeconomic concerns, and public input.

If the RCT does not recommend recertification, they may make recommendations on any or all of the pending applications for a coal lease. The meeting will also serve as a forum for public discussion on Federal coal management issues of regional concern. Any party interested in providing input about the need for regional leasing may do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003 by August 16, 1991, or by addressing the RCT with his/her concern at the meeting on September 6, 1991. Public input opportunities will be provided on all agenda items during the meeting. The proposed agenda for this meeting is as follows:

1. Introductions.
2. Approval of Minutes of April 3, 1990 RCT meeting Regional Coal Team Meeting.
3. RCT Coal Leasing-by-Application Operational Guidelines.
4. Regional Coal Activity Status.
 - a. Current Production.

b. Preference Right Lease Applications (PRLA).

c. Exchanges—Bull Mountain; Texaco—DeSmet.

d. Coal Lease Modification(s).

—East Black Thunder Modification (WYW2313-5 MM Tons).

e. Pending LBA Applications.

—Jacob's Ranch LBA (WYW117924-132 MM Tons)—Kerr-McGee.

—West Black Thunder LBA (WYW8907-450 MM Tons)—Thunder Basin Coal Company.

—North Antelope LBA (WYW119554-120 MM Tons)—Powder River Coal Company.

—Rochelle LBA (WYW119555-150 MM Tons)—Powder River Coal Company.

—West Rocky Butte LBA (WYW122586-50 MM Tons)—Northwestern Resources.

5. Review of Market Conditions.

6. RCT Activity Planning

Recommendations.

a. Recommendation on continuation of decertification.

b. Review and recommendation(s) on pending lease applications.

7. Other Regional Issues.

8. Adjourn.

Public discussion opportunities will be provided on all agenda items.

F. William Eikenberry,

Associate State Director.

[FR Doc. 91-18554 Filed 8-5-91; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

South Delta Water Management Program, Sacramento—San Joaquin Delta, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reopen comment period; DES 90-20.

SUMMARY: The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are reopening the public comment period for the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) for the South Delta Water Management Program (DES 90-20). The DEIR/DEIS was filed with the Environmental Protection Agency on July 30, 1990. The public comment period was previously extended to March 15, 1991, in the *Federal Register*, Vol. 56, No. 9, January 14, 1991. The public comment period was reopened to June 30, 1991, in the *Federal Register*, Vol. 56, No. 9, April 26, 1991.

DATES: The comment period is reopened to September 30, 1991.

ADDRESSES: Copies of the DEIR/DEIS may be requested from DWR or Reclamation's Mid-Pacific Regional Office at the following addresses:

- Department of Water Resources, Division of Planning, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236-0001, telephone: (916) 445-9371.
- Regional Director, Bureau of Reclamation, Mid-Atlantic Regional Office, 2800 Cottage Way, Attention: MP-750, Sacramento, CA 95825-1898, telephone: (916) 978-5130.

Copies of the DEIR/DEIS are available for inspection at the addresses above, at libraries in California, and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW, room 7456, Washington, DC 20240, telephone: (202) 208-4662.
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver Colorado 80225, telephone: (303) 236-6963.

FOR FURTHER INFORMATION CONTACT:

Fred Bachmann [Chief, South Delta Management Section, Department of Water Resources], (916) 324-4751; Douglas Kleinsmith, [Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region], (916) 978-5121; or Dr. Wayne Deason [Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center], (303) 236-9336.

SUPPLEMENTARY INFORMATION: DWR informed Reclamation on June 27, 1991, that DWR had extended the comment period to September 30, 1991, to allow more time for the public to review and comment on the DEIR/DEIS.

Dated: July 26, 1991.

Margaret W. Sibley,

Assistant Commissioner, Administration.

[FR Doc. 91-18551 Filed 8-5-91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Aleutian Canada Goose for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revised Aleutian

Canada Goose Recovery Plan for public review. This species nests in Alaska and winters in Oregon and California. The Service solicits review and comments from the public on this draft revised plan.

DATES: Comments from all interested parties on the draft recovery plan will be considered by the Service if received on or before September 16, 1991.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Field Supervisor, Ecological Services Anchorage Field Office, U.S. Fish and Wildlife Service, 605 W. 4th Avenue, room 62, Anchorage, Alaska 99501, or Dr. Andrew F. Robinson, Jr., Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NW. 11th. Avenue, Portland, Oregon 97232-4181. Written comments and materials should be addressed to Mr. Brian Anderson at the above Anchorage, Alaska address. Comments and materials received are available for public inspection, by appointment, during normal business hours at either the above Anchorage, Alaska or Portland, Oregon address.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Anderson at the above Anchorage, Alaska address (telephone 907/271-2888 or FTS 868-2888).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. The Service also periodically revises approved recovery plans to incorporate new information and any change in status. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (ACT), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented

during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Aleutian Canada goose (*Branta canadensis leucopareia*) nests on islands of the Alaska Peninsula and Aleutian Archipelago. The species winters in coastal Oregon and the Central Valley of California. Aleutian Canada geese were originally listed as endangered in 1967. Two major threats are responsible for the decline of this species: Predation of nesting geese and their young on many of the breeding islands by introduced exotic foxes and hunting on the wintering grounds. Recovery efforts have included hunting closures, and the reestablishment of Aleutian geese on former breeding islands following the removal of introduced fox. These efforts have been successful in bringing the Aleutian goose population up from approximately 800 birds in 1975 to over 8,000 birds in 1990. Effective January 11, 1991, the Aleutian goose was reclassified from endangered to the less critical threatened status (55 FR 51106).

The Aleutian Canada Goose Recovery Plan is being revised for the first time since 1982. Revisions to the plan places a new emphasis on restoring remnant breeding populations in the Central Aleutians and Semidi Islands, securing migration and wintering habitat in California and Oregon, and updating the original objects and tasks. Several public and private entities are cooperating in the Aleutian Canada goose recovery program, including the California Department of Fish and Game, Oregon Department of Fish and Game, and the East Bay Municipal Utility District.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 30, 1991.

Rowan W. Gould,
Acting Regional Director.

[FR Doc. 91-18629 Filed 8-5-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 25, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 21, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Humboldt County

Trinidad Head Light Station (Light Stations of California MPS), Trinidad Head, Trinidad vicinity, 91001098

Marin County

Point Bonita Light Station (Light Stations of California MPS), Point Bonita, Sausalito, 91001099

Point Reyes Light Station (Light Stations of California MPS), Point Reyes National Seashore, Point Reyes vicinity, 91001100

Mendocino County

Point Cabrillo Light Station (Light Stations of California MPS), 45300 Lighthouse Rd., Caspar vicinity, 91001092

Monterey County

Point Sur Light Station (Light Stations of California MPS), Morro Rock on Point Sur, 0.5 mi. w of CA 1. Big Sur vicinity, 91001097

San Francisco County

Yerba Buena Island Lighthouse (Light Stations of California MPS), Yerba Buena Island, San Francisco vicinity, 91001096

San Luis Obispo County

Piedras Blancas Light Station (Light Stations of California MPS), CA 1 on Point Piedras Blancas, San Simeon vicinity, 91001095

San Luis Obispo Light Station (Light Stations of California MPS), Point San Luis. Avila Beach vicinity, 91001093

San Mateo County

Point Montara Light Station (Light Stations of California MPS), Jct. of 16th St. and CA 1, Montara vicinity, 91001094

Ventura County

Anacapa Island Light Station (Light Stations of California MPS), Anacapa Island. Channel Islands National Park, Oxnard vicinity, 91001101

FLORIDA

Escambia County

King-Hooton House, 512-514 N. Seventh Ave., Pensacola, 91001090

GUAM

Guam County

Faha Massacre Site, Off Rt. 4, S of Pigua R., Merizo vicinity, 91001091

IOWA

Henry County

Budde—Singer Building (Mount Pleasant MPS), 110 N. Main, Mount Pleasant, 91001112

City Hall (Mount Pleasant MPS), 220 W. Monroe, Mount Pleasant, 91001120

First National Bank (Mount Pleasant MPS), 101 S. Jefferson, Mount Pleasant, 91001118

Henry County Savings Bank (Mount Pleasant MPS), 100 S. Main, Mount Pleasant, 91001116

Louisa Building (Mount Pleasant MPS), 120 S. Main, Mount Pleasant, 91001117

Masonic Temple Theater (Mount Pleasant MPS), 115 N. Main, Mount Pleasant, 91001119

Masters Building (Mount Pleasant MPS), 221 W. Monroe, Mount Pleasant, 91001121

McCandless Building (Mount Pleasant MPS), 115 W. Monroe, Mount Pleasant, 91001111

National State Bank (Mount Pleasant MPS), 101 W. Monroe, Mount Pleasant, 91001115

Timmerman—Burd Building (Mount Pleasant MPS), 118 S. Main, Mount Pleasant, 91001113

Union Block (Mount Pleasant MPS), 109–113 W. Monroe, Mount Pleasant, 91001110

Zuhn Building (Mount Pleasant MPS), 201 E. Monroe, Mount Pleasant, 91001114

KANSAS

Rooks County

Thomas Barn, NE of Woodston, near Osborne Co. line, Woodston vicinity, 91001104

Sedgwick County

Hypatia House, 1215 N. Broadway, Wichita, 91001105

KENTUCKY

Nelson County

Kelley, John S., House, 306 S. Fifth St., Bardstown, 91001103

MISSISSIPPI

Pike County

Tanglewood, Co. Rd. 468, 1 mi. N of MS 48, Magnolia vicinity, 91001102

TENNESSEE

Anderson County

Brannon, Luther, House (Oak Ridge MPS), 151 Oak Ridge Tpk., Oak Ridge, 91001108

Jones, J. B., House (Oak Ridge MPS), Old Edgemoor Rd. between Bethel Valley Rd. and Melton Hill Lake, Oak Ridge, 91001107

Oak Ridge Historic District (Oak Ridge MPS), Roughly bounded by East Dr., W. Outer Dr., Louisiana and Tennessee Aves., Oak Ridge, 91001109

Woodland—Scarboro Historic District (Oak Ridge MPS), Roughly bounded by Rutgers Ave., Lafayette Dr., Benedict, Wilburforce and Illinois Aves., Oak Ridge, 91001106

VIRGINIA

Hanover County

Hanover Meeting House, Address Restricted, Mechanicsville vicinity, 91001089

[FR Doc. 91-18555 Filed 8-5-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed action.

SUMMARY: The Commission is proposing to adopt a 1989 value for productivity change and incorporate that value, along with previously calculated data, into a 1982–1989 (eight-year) averaging period. Estimated average productivity growth for 1989 is 1.060. Estimated annual productivity for the 1982–1989 period is 1.046 or 4.6 percent. Addition of 1989 data will lengthen the averaging period and provide a more stable base for productivity measurement. The productivity adjustment is used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

DATES: Comments are due August 26, 1991. Replies are due September 10, 1991.

ADDRESSES: Send original and 10 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275-7354, Robert C. Hasek, (202) 275-0938, [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423, or telephone (202) 289-4357/4359.

Assistance for the hearing impaired is available through TDD Services at (202) 275-1721 or by pickup from Dynamic Concepts, Inc., room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: July 29, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons,

Phillips, and McDonald. Chairman Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18611 Filed 8-5-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31907]

Georgia Pacific Corp.—Continuance in Control Exemption—Arkansas Louisiana & Mississippi Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the continuance in control by Georgia Pacific Corporation (GP) of Arkansas Louisiana & Mississippi Railroad Company (AL&M) when it becomes a rail common carrier, subject to standard labor protective conditions. GP has six short-line Class III rail carrier subsidiaries, which are for the most part non-contiguous: (1) Ashley, Drew & Northern Railway (AD&N), which connects with AL&M at Crossett (none of GP's other rail subsidiaries connects with that line); (2) Fordyce & Princeton Railroad (F&P), at Fordyce, AR, which holds trackage rights over the AD&N and interchanges with AL&M at Crossett; (3) Amador Central Railroad, at Martell, CA; (4) Chattahoochee Industrial Railroad, at Cedar Springs, GA; (5) Gloster Southern Railroad, at Gloster and Columbia, MS; and (6) Old Augusta Railroad, at New Augusta, MS.

This transaction is related to the notice of exemption in Finance Docket No. 31906, Arkansas Louisiana & Mississippi Railroad Company—Acquisition and Operation Exemption—Arkansas and Louisiana Missouri Railway Company.

DATES: This exemption will be effective on September 5, 1991. Petitions to reopen must be filed by September 25, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31907 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and
- (2) Petitioner's representative: D. Eugenia Langan, Shea & Gardner, 1800 Massachusetts Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: July 29, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18612 Filed 8-5-91; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Monday, August 12, 1991, 9:30 a.m. to 3 p.m.

ADDRESSES: Public Hearing, Independent Square, 2455 So. Saint Andrews, Los Angeles, CA 90018.

Full Commission meeting at Hyatt Regency Hotel, 4 p.m. to 6 p.m., The Westin Bonaventure Hotel, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., room 7121, Washington, DC 20005 (202) 275-6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,
Administrative Officer.

[FR Doc. 91-18591 Filed 8-5-91; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 5, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7318). In addition, copies of such comments may be sent to Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: NEA Museum Program FY 1993-94 Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals or households; State and local governments; Non-profit institutions.

Use: Federal aid is provided in the form of grants for arts and education oriented projects. Guideline instructions and applications elicit relevant information from applicants who apply under specific Museum Program categories. This information

is necessary for a thorough and fair consideration of competing proposals in the peer panel review process.

Estimated Number of Respondents: 703.

Average Burden Hours per Response: 20.

Total Estimated Burden: 21,620.

Murray R. Welsh,

Director, Administrative Services Division,
National Endowment for the Arts.

[FR Doc. 91-18564 Filed 8-5-91; 8:45 am]

BILLING CODE 7537-01-M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Dance Challenge III Section) to the National Council on the Arts will be held on August 21, 1991 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10 a.m. and 4:30 p.m.-5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies,

National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 91-18571 Filed 8-5-91; 8:45 am]
BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (General Services to the Field Section) to the National Council on the Arts will be held on August 26-27, 1991 from 9 a.m.-7 p.m. and August 28 from 9 a.m.-5 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28 from 2:30 p.m.-5 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 26-27 from 9 a.m.-7 p.m. and August 28 from 9 a.m.-2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the

Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 91-18572 Filed 8-5-91; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 6, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain

animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Mahlon C. Kennicutt II, Geochemical and Environmental Research, Texas A&M University, College Station, Texas 77845.

Activity for Which Permit Requested

Enter Specially Protected Area. The applicant is conducting research on the effects of an oil spill in Arthur Harbor near Palmer Station, Antarctica. He requests permission to enter Litchfield Island Specially Protected Area to collect sediments and other samples (fishes, limpets).

Location

Antarctic Peninsula area, Antarctica.

Dates

January 1992-June 1992.

2. Applicant

J. Robie Vestal, Department of Biology, University of Cincinnati, Cincinnati, Ohio 45221.

Activity for Which Permit Requested

Enter Site of Special Scientific Interest. The applicant is conducting research on rocks containing cryptoendolithic microbiota. He requests permission to enter Linnaeus Terrace Site of Special Scientific Interest to collect rock samples.

Location

Linnaeus Terrace, Victoria Land, Antarctica.

Dates

December 1991-February 1993.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-18592 Filed 8-5-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp., Jersey Central Power & Light Co; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is

considering issuance of an amendment to Facility Operating License No. DPR-18 issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specification Section 3.4 to incorporate the 10 CFR 50.46 loss-of-coolant accident analysis that is the basis for the Average Planar Linear Heat Generation Rate (APLHGR) limit provided in Technical Specification section 3.10 "Core Limits". The Limiting Conditions for Operation and Bases will be changed as appropriate.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated August 14, 1990, as supplemented June 18, 1991.

Need for the Proposed Action

The proposed changes to the Facility Operating License are needed because the reduction of the APLHGR limits when a redundant Core Spray Loop is out of service would ensure 10 CFR 50.46 criteria are met for each action statement of the applicable Limiting Condition for Operation (LCO).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specification 3.4 to incorporate the 10 CFR 50.46 loss-of-coolant accident analysis that is the basis for the APLHGR limit provided in Technical Specification section 3.10 "Core Limits."

Based on its review, the Commission concludes that the proposed changes are acceptable. The NRC staff has determined that the proposed changes do not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed changes do not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the Technical Specifications involve components in the plant which are located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concludes that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The NRC staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 14, 1990, as revised June 18, 1991, which are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland 31st day of July, 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91-18604 Filed 8-5-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Environment Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from certain requirements of 10 CFR part 50, appendix E to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the scheduler requirements of appendix E to 10 CFR part 50. On May 24, 1991, the licensee requested an exemption from section IV.F.3, which requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The Need for the Proposed Action

The proposed exemption is needed because the Federal Emergency Management Agency (FEMA) has requested that the State of Michigan and the licensee reschedule the offsite participation portion of the annual emergency preparedness exercise for D.C. Cook, Units 1 and 2 from November 1992 until May 1993.

The current schedule requires the State of Michigan to participate in one offsite exercise one year and in three offsite exercises during the next year. This places an uneven workload on the FEMA Region V office which evaluates the offsite aspects of the exercises.

Environmental Impact of the Proposed Action

The proposed exemption will move the State and Berrien County participation from the November 1992 exercise to the May 1993 exercise. The November 1992 exercise would then become a utility only exercise.

The affected local jurisdiction, Berrien County, participates in both the Palisades and Donald C. Cook Nuclear Plant Radiological Emergency Preparedness (REP) exercises. The schedule change would not reduce the

number of REP exercises in which Berrien County participates.

Because of the requested change, the licensee for D.C. Cook would not meet the requirement in 1992 that "each licensee at each site shall exercise with offsite authorities * * *," however, the State of Michigan and Berrien County will still exercise with the Pallsades Nuclear Plant as scheduled and would exercise with the D.C. Cook licensee in May 1993 approximately six months later than scheduled. The proposed exemption is temporary and is fully supported by the State of Michigan. The NRC's rating of licensee performance during previous REPs at D.C. Cook has been high and there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the D.C. Cook Nuclear Plant.

Accordingly, the exemption does not appear to adversely affect either the probability or the consequences of an accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does not affect a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in increased operational burden on FEMA Region V.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

By letter dated April 15, 1991, the State of Michigan documented the need of FEMA Region V Office and the support of FEMA headquarters for the requested exemption. The State of Michigan further indicated that neither they nor the affected local jurisdiction, Berrien County, objected to the proposed schedule change. This information was considered by the NRC in the evaluation of the requested exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated May 24, 1991, with the State of Michigan letter dated April 15, 1991, attached. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 29th day of July 1991.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18605 Filed 8-5-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 40-8958 and 40-8981]

Pathfinder Mines Corp.; Final Finding of No Significant Impact Regarding Termination of Source Material License SUA-1539 Authorizing the Commercial Operation of Ruth In-Situ Leach Project, Johnson County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source Material License SUA-1539.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear

Regulatory Commission (NRC), Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impact on-site and off-site due to radiological releases that may occur during the course of the Ruth in-situ leach project. Based on the review of the operational data and the Pathfinder Mines Corporation's application materials, the Commission has determined that no significant impact will result from operation of the site. The proposed action is to incorporate all license conditions associated with the Ruth in-situ leach project into the license covering the North Butte in-situ leach operations. The North Butte Source Material License SUA-1540 has been amended to include all of the Ruth license commitments. Due to this Source Material License SUA-1539 may be terminated without any significant impacts.

In consideration of this situation, the Director of the Uranium Recovery Field Office, in accordance with 10 CFR 51.35 is issuing a final finding of no significant impact. Concurrent with this finding, the Commission's Uranium Recovery Field Office will terminate Source Material License SUA-1539.

Dated at Denver, Colorado, this 28th day of July, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall, Director,

Uranium Recovery Field Office Region IV

[FR Doc. 91-18606 Filed 8-5-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 34th meeting on August 27 (7 p.m.-9 p.m.), 28 (8:30 a.m.-9 p.m.) and 29 (8:30 a.m.-5 p.m.), 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to the public.

The agenda for the subject meeting shall be as follows:

A. State of Nevada to present a summary and discussion of the State's review and comments on DOE's Site Characterization Plan and related Study Plans.

B. DOE to present a summary and discussion of the DOE responses to comments by EPA, NRC and State of Nevada on Yucca Mountain Site Characterization Plan.

C. Presentation by the NMSS High Level Waste staff on the results of the review of DOE's responses to the NRC staff's Site Characterization Analysis.

D. Presentation on the proactive program for High Level Waste. This involves planned rulemakings, guidelines, and technical positions in support of the High Level Waste program.

E. Prepare the next Program Plan for ACNW activities over the next four months.

F. Begin deliberations on what technical and scientific questions are necessary to make a determination that adequate technology is available to safely store high-level radioactive wastes (spent fuel) resulting from nuclear power plant operations on an interim basis for the next 50 years.

G. Review the NRC staff's current position on the Working Draft #3 of the U.S. Environmental Protection Agency's High-Level Waste Disposal Standards, and a revised NRC staff paper on their approach for dealing with uncertainties in implementing the EPA high-level waste standards.

H. Review the staff's response to the ACNW's May 30, 1991, report on alternative approach to the probabilistic section of the containment requirements in 40 CFR part 191 ("The Three-Bucket Approach").

I. Discuss Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the *Federal Register* on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the

Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: July 31, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-18602 Filed 8-5-91; 8:45 am]

BILLING CODE 7590-01-M

Availability of Staff Technical Position on Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG-1439, "Staff Technical Position (STP) on Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility (ESF)."

ADDRESSES: Copies of NUREG-1439, including the staff disposition of comments from the public on the August 1990 draft technical position (TP) and from the Advisory Committee on Nuclear Waste (ACNW) on the final draft STP, can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG-1439 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Robert D. Carlson, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. Telephone 301/492-0435.

SUPPLEMENTARY INFORMATION: This STP is undertaken for the purpose of compiling and further clarifying previous staff positions on regulatory considerations in the design and construction of the exploratory shaft facility (ESF) for a potential high-level radioactive waste repository. (DOE now refers to the ESF as the "exploratory studies facility.") The STP covers topics that include certain aspects of the design control process, coordination of ESF design with design of the geologic repository operations area (GROA), consideration of alternatives, excavation methods, test interference, and site characterization. The positions and discussion in this STP are based on the premise that the permanent components of the ESF may become a part of an eventual GROA. Therefore, all 10 CFR part 60 requirements applicable to the GROA design would be considered applicable to the ESF design. This STP lists the key regulations in 10 CFR part 60 that should be considered in the design and construction of the ESF and presents the staff position statements and corresponding discussions.

Finally, this STP gives specific guidelines by which the staff plans to assess the U.S. Department of Energy's work on the ESF design and documents related thereto.

On August 14, 1990, the NRC published the "Notice of Availability" for the draft TP and solicited public comments (see 44 FR 33193). As a result, approximately 50 comments were received from three different parties. The NRC staff reviewed the comments and, as a result, changes and clarifications have been incorporated into the draft TP now classified as a "STP." Staff responses to the comments have been documented separately and included as appendices. The STP has been developed after consideration of the ACNW comments on the draft STP as well. The ACNW comments and staff responses to these comments have been documented as an appendix to the STP.

Dated at Rockville, Maryland this 24th day of May, 1991.

For the Nuclear Regulatory Commission,
Robert M. Bernero,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-18607 Filed 8-5-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29487; File No. SR-CBOE-91-25]

Self-Regulatory Organizations; Chicago Board Options Exchange; Notice of Filing of Proposed Change Relating to Minor Rule Violation Fine Plan

July 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.¹

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fine system for the disposition of certain minor rule violations. A summary of the proposed fine system is set forth below.²

The proposed rule would enable the Exchange, in lieu of commencing a disciplinary proceeding for violations of minor rules, to impose a fine in an amount not to exceed \$5,000. The proposed rule contains a list of the rule violations that would be subject to the summary fine system, along with the proposed fine schedules. Among the violations proposed to be subject to the summary fine procedures are the Exchange's trading conduct and decorum violations, position limit violations and audit trail violations.

A person fined pursuant to the proposed rule may contest the fine within a specified period of time, at which point the matter will be deemed a disciplinary proceeding subject to review by the Business Conduct Committee. Contested trading conduct and decorum finds not in excess of \$2,500 are subject to review by the Appeals Committee. Persons wishing to contest a fine must pay a filing fee, which will be refunded if the fine

ultimately is eliminated. The filing fee also may be waived upon a satisfactory showing of hardship. Fines that are not contested in a timely manner will be collected by drafting the account of the clearing member previously designated by the person fined pursuant to Exchange Rule 3.23.

Uncontested fines in amounts not exceeding \$2,500 will be reported to the Commission on a quarterly basis. Fines in excess of \$2,500 would be subject to current, rather than quarterly, reporting to the Commission in accordance with Rule 19d-1 of the Act. The CBOE will issue circulars periodically to supplement various provisions of the proposed rule.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the fine system for minor rule violations is to provide a mechanism whereby certain minor violations of Exchange rules can be resolved fairly, effectively, and expeditiously. Because the violations subject to fine are objectively ascertainable, they are conducive to summary treatment. The imposition of fines pursuant to pre-established schedules that are known to the CBOE membership will help to ensure equitable treatment among persons charged with minor rule violations, as well as providing an effective deterrent. In addition, by enabling persons to pay the fine and avoid the time-consuming proceedings necessitated by more complex disciplinary matters, the proposed rule will better allocate the Exchange's resources. Finally, the rule will simplify the Exchange's administrative responsibilities, since

uncontested fines not exceeding \$2,500 can be reported to the Commission quarterly and in an abbreviated fashion.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(1) and 6(b)(7) in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or,
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 4 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

¹ This notice satisfied the solicitation requirements contained in rule 19d-1(c)(2).

² The CBOE filed an amendment to the proposal with the Commission on July 8, 1991, which added a summary of the proposed fine system to the notice. See letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas Gira, Branch Chief, Division of Market Regulation, Commission, dated June 28, 1991.

20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-91-25 and should be submitted by August 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-18574 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Cincinnati Stock Exchange,
Incorporated**

July 31, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following security:

IMCO Recycling, Inc.

Common Stock, \$0.10 Par Value (File No. 7-7120)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-18535 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29498; File No. SR-NYSE-91-24]

**Self-Regulatory Organizations; Notice
of Filing and Order Granting
Accelerated Approval of Proposed
Rule Change by the New York Stock
Exchange, Inc., Relating to an
Extension of the Pilot Program for
Rule 80A**

July 30, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 19, 1991, the New York Stock Exchange, Inc. ("NYSE" or Exchange) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The proposed rule change would extend a pilot program for the provisions of Exchange Rule 80A relating to certain restrictions on the execution of index arbitrage orders when the Dow Jones Industrial Average ("DJIA") has advanced or declined 50 points or more from its closing value on the previous trading day.¹ Specifically, the Exchange requests that the pilot be extended until the earlier of November 1, 1991 or the date on which the Commission takes action on the permanent approval of the pilot. In a separate filing, the Exchange has requested permanent approval of these provisions of rule 80A ("Permanent Approval Request").²

¹ Initially, the NYSE requested an extension of the pilot until the earlier of 60 days from the expiration of the pilot or the date when the Commission takes action on permanent approval of the pilot. Subsequently, the NYSE amended the filing to provide for an extension of the pilot until November 1, 1991, or until such earlier date when the Commission acts on permanent approval of the pilot. The NYSE's amendment also clarified that, while the Exchange's original filing only specifically addressed the extension of trading restrictions imposed on index arbitrage activity pursuant to NYSE Rule 80A(c), the Exchange also proposes to extend the provisions of Rule 80A(d) which place restrictions on the trading of baskets of stock through the NYSE's Exchange Stock Portfolio ("ESP") Service. See letter from Brian M. McNamara, Managing Director, NYSE, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated July 25, 1991.

² See Securities Exchange Release No. 29308 (June 14, 1991), 56 FR 23428 (File No. SR-NYSE-91-21). The NYSE also submitted to the Commission a report on the operation of the pilot program. See The Rule 80A Index Arbitrage Tick Test—Report to the Commission ("NYSE Pilot Report"), NYSE Research & Planning, May 31, 1991.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The provisions of Exchange Rule 80A regarding stabilization procedures as they apply to index arbitrage orders in component stocks of the S&P 500 Stock Price Index when the DJIA advances or declines by 50 points from its previous day's closing value were approved by the Commission for a one year pilot ending July 31, 1991.³ On June 10, 1991, the Exchange filed a request to make these procedures permanent. The Exchange now is requesting approval to extend the pilot program in order to allow for the uninterrupted utilization of the procedures while the Commission considers the Exchange's Permanent Approval Request.

As stated in its Permanent Approval Request, the Exchange believes that the procedures have worked well to minimize excess volatility which may be associated with index arbitrage activity during periods of significant market movement without adversely impacting

³ Specifically, when the DJIA declines by 50 points or more from the previous trading day's closing value, all index arbitrage orders to sell must be entered with the instruction "sell plus." Conversely, when the DJIA advanced by 50 points or more from its previous trading day's closing value, all index arbitrage orders to buy component stocks of the S&P 500 must be entered with the instruction "buy minus." These conditions once activated remain in effect for the remainder of the trading day, except that the conditions no longer apply when the DJIA moves back to a value which is 25 points or less from its previous day's closing value. These conditions are reimposed if the DJIA subsequently were to reach again the 50 point DJIA trigger and are removed if the DJIA again moved to a value that is 25 points or less from the previous day's close. The pilot program provides for similar treatment of trading through the NYSE's ESP Service after the DJIA moves 50 points from its previous day's close. For additional information regarding the pilot program procedures, see Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468.

the markets in derivative equity instruments.

The Exchange believes that the basis for this proposed rule change under the Act is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act. The Exchange believes that the procedures have provided a benefit to its marketplace in helping to minimize excess market volatility during periods of significant market activity and continuance of the pilot program procedures would be in the interest of public investors. The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and requirements thereunder.⁴ The Commission concluded, when approving the commencement of the pilot program, that the NYSE pilot program to condition index arbitrage and ESP trading activities after a 50 point move in the DJIA was a reasonable effort by the Exchange to attempt to address volatility in the marketplace. The Commission also noted that establishing pre-set trading conditions that only apply after major market moves and then only to a narrow and limited segment of trading activity, specifically index arbitrage activity and ESP trading, was a reasonable proposal by the

Exchange that should be provided an opportunity to succeed.

When approving the pilot program, the Commission required the NYSE to provide a quantitative and analytical assessment of the effects, if any, of the pilot rules on curbing destabilization of the stock market and retaining liquidity during volatility market conditions.⁵ At the present time, the Commission is continuing its review of the NYSE Pilot Report and believes that the pilot program should be permitted to continue until the Commission's review is completed.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the *Federal Register* so that the program will not lapse before the Commission is ready to consider whether it should be approved on a permanent basis. If, as the NYSE states in its order seeking permanent approval of the index arbitrage restriction, rule 80A has been helpful to investor confidence, then it is consistent with the public interest to continue the program uninterrupted while the Commission evaluates the issue. Finally, to date, the Commission has not received any adverse comments concerning the operation of the Exchange's pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at

⁴ In particular, the approval order identified three specific factors that should be analyzed: (1) Correction of stock prices after the 50 point triggering event from their low (high) price, (2) the bid/ask spreads of the stocks contained in the S&P 500 during those periods, and (3) the divergence between stocks, stock index futures and index options prices during those periods. Additionally, the Commission directed the NYSE to evaluate alternative measures to achieve these objectives.

the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 27, 1991.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NYSE-91-24) is approved and, accordingly, that the pilot program is extended until November 1, 1991, or until such earlier date when the Commission acts on the NYSE's Permanent Approval Request.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-18575 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29506; File No. SR-NYSE-91-25]

Self-Regulatory organizations; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Six-month Extension of Rule 805 (Priority of Basket Bids and Offers) and Rule 806 (Taking or Supplying Baskets Named in Order)

July 31, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1991, the New York Stock Exchange, Inc. (NYSE or Exchange) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also is approving the proposed rule change on an accelerated basis.¹

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend the effectiveness of Exchange Rule 805 (Priority of Basket Bids and Offers) and rule 806 (Taking or Supplying Baskets Named in Order) to January 31, 1992.²

⁶ 15 U.S.C. 78s(b) (1982).

¹ In its filing, the NYSE requested that the Commission approve this proposal on an accelerated basis. See File No. SR-NYSE-91-25.

² Originally, the Commission gave temporary approval to Rules 805 and 806 for a six-month

Continued

⁴ 15 U.S.C. 78f(b)(5) (1982).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of this filing is to extend the effectiveness of rule 805 (Priority of Basket Bids and Offers) and rule 806 (Taking or Supplying Baskets Named in Order) until January 31, 1992.

Rule 805 sets forth the rules of priority applicable to basket bids and offers. The highest bid or lowest offer has priority in all cases. At the same price, Tier 1 and Tier 2 bids and offers have priority over all other bids and offers, so as to enhance the opportunity for public customers in the component stock markets to participate. Next, priority at a price is determined by the time of entry on the Exchange Stock Portfolio ("ESP") display unit. Finally, a bid or offer from the trading crowd has priority over other bids or offers from the trading crowd at that price (though not over bids or offers on the display unit at that price) based on when the bid or offer was made. Where the sequence of trading crowd bids and offers cannot be determined, or where bids and offers in the trading crowd are made simultaneously, priority will be shared on a pro rata basis. The Rule also makes clear that, unlike stock trading, a basket sale does not remove all bids and offers. Paragraph (d) of the Rule allows a member to cross two agency orders without exposing either side, but only at a price that is better than the ESP

display unit's best bid and offer for the basket, and if the cross price is announced to the trading crowd.

Rule 806 specifies that a Competitive Basket Market-Maker ("CBMM") may only facilitate a customer's order at a price that is better than the best bid or offer on the ESP display unit, and only after announcing the facilitation price to other members in the trading crowd. Rule 806(b) prohibits another Exchange member from interceding in the facilitation if the proposed facilitation price is only one "minimum variation" (i.e., .01 index points) better than the prevailing quote on the customer's side of the market. When a facilitation is more than the minimum variation from the prevailing quote, NYSE Rule 806(b) permits another member to intercede in a CBMM's facilitation trade by taking or supplying all of the baskets that the customer seeks at a price that is better for the customer than the facilitation price.

In its original filing of these rules, the Exchange agreed, in response to a request from the Commission staff, to provide a six-month "sunset" provision to these rules.³ The Commission noted in its order granting temporary approval to Rules 805 and 806 that it would be difficult to predict whether the ESP market would expand and be characterized by active basket trading, or whether trading would be sporadic. Accordingly, the Commission determined that it was consistent with the Act for the Exchange to build in necessary incentives to ensure active market-making participation, at least in the initial stages of basket trading, and therefore the Commission gave temporary approval to Rules 805 and 806 for a six-month period, ending April 30, 1990. Subsequently, the Exchange requested and was granted two additional extensions.⁴ The effectiveness of Rules 805 and 806 are due to expire July 31, 1991.

Volume in basket trading has continued to be low. In light of this low trading activity in baskets, and consistent with the decision to extend the exemption from consolidated last trade reporting of ESP volume in component stocks,⁵ the Exchange is requesting that the Commission extend the effectiveness of the current rules for six months so that additional market experience can be gained.

Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5),

which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to File No. SR-NYSE-91-25 and should be submitted by August 27, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has determined that the proposed rule change to extend the effectiveness of NYSE Rules 805 and 806 until January 31, 1992 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

period, ending April 30, 1990 see Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834 (order temporarily approving File No. SR-NYSE-89-5). Subsequently, the Exchange requested, and the Commission granted, a nine-month extension of these rules through January 31, 1991 see Securities Exchange Act Release No. 27965 (April 30, 1990), 55 FR 19133 (order temporarily approving File No. SR-NYSE-90-23), and an additional six-month extension due to expire on July 31, 1991 see Securities Exchange Act Release No. 28840 (January 31, 1991), 56 FR 4882 (February 6, 1991).

³ See note 2, *supra*.

⁴ See note 2, *supra*.

⁵ See note 6, *infra*.

exchange.⁶ In particular, the Commission believes that the proposed rule change is consistent with the section 6(b)(5) requirement that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

In the order extending the effectiveness of Rules 805 and 806 until July 31, 1991, the Commission stated that the Exchange should continue to assess the NYSE's basket market and file a report with the Commission detailing the Exchange's experience regarding the trading of baskets. The Exchange recently informed the Commission that trading volume remains low.⁷ Thus, the Commission believes that in light of the low basket volume to date, the Exchange should be able to continue employing rules of time and price priority in order to provide an incentive that may attract upstairs capital to the basket market. Because the proposed extension of effectiveness of rule 805 will permit the Exchange to continue allowing baskets to trade under the regime of strict price and time priority, with no distinction between proprietary and customer orders, thereby providing an incentive for upstairs firms to participate in the basket market, the Commission has determined to approve an extension of the effectiveness of Rule 805 on a temporary six-month basis.

Further, the proposed extensions of effectiveness of Rule 806 will permit Exchange to continue allowing only CBMMs to effect proprietary cross transactions. While the Commission remains concerned about the anti-competitive limitations on proprietary trading contained in Rule 806, the Commission believes that a six-month extension of the effectiveness of the rule is consistent with the Act. As with the extension of Rule 805, the low basket volume to date justifies the continuations of Rule 806 as structured in order to attract upstairs market-making participation to the basket market. Accordingly, the Commission has determined to approve, on a temporary six-month basis, an extension of the effectiveness of the NYSE's

limitations on proprietary trading contained in Rule 806. If during the next six months, however, baskets become actively traded, no artificial market-making incentives should be necessary and the Commission trading and facilitation by all member firms.

Because trading volume in the baskets has remained lower than previously anticipated, the Commission believes an extension of NYSE rules 805 and 806 until January 31, 1992 would provide the Exchange with additional time to evaluate the effects of basket trading on the market. As indicated in the past orders extending the effectiveness of rules 805 and 806, the Commission expects that during the extended time period of six months, the Exchange will continue to assess the NYSE's basket market. The Commission also expects that by December 1, 1991 the Exchange will file a report detailing the NYSE's experience regarding the trading of baskets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order that the Exchange members may continue their current order priority and precedence and proprietary facilitation procedures for basket trading without disruption. In addition, accelerated approval is necessary because the effectiveness of the rules expires on July 31, 1991. Finally, the Commission did not receive any comments on the orders approving the previous two extensions of Rules 805

It is therefore Ordered, pursuant to section 19(b)(2)⁸ of the Act, that the proposed rule change be, and hereby is, approved for a six-month period ending on January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18576 Filed 8-5-91; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-29507; File No. SR-NYSE-91-25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Extending Exemption Relating to Basket Trading

July 31, 1991.

I. Introduction

On October 26, 1989, the Securities

and Exchange Commission (Commission or SEC) approved a proposed rule change submitted by the New York Stock Exchange, Inc. (NYSE or Exchange) to trade "Exchange Stock Portfolios" (ESPs), standardized baskets of stocks, on the floor of the Exchange (ESP Service).¹ As part of the proposal, the Exchange requested certain exemptions under rule 11Aa3-1 of the Securities Exchange Act of 1934 (Act) from the Rule's requirements to report transactions in reported securities and to disseminate on a consolidated basis the total trading volume for each component stock in ESP transactions.² The Commission granted an exemption from the requirement that the NYSE disseminate transaction reports for individual securities and a temporary exemption for the dissemination, on a consolidated basis, of the total trading volume for each component stock in ESP transactions.³ This temporary exemption was extended through July 31, 1991.⁴ Because the volume in ESPs continues to be low, the NYSE requested that the Commission extend the temporary exemption once more through January 31, 1992.⁵ This order approves the extension of the temporary exemption.

II. Discussion.

Pursuant to Rule 11Aa3-1⁶ under the Act, the NYSE is required to collect and disseminate transaction data on securities listed and traded on the Exchange. More specifically, Rule 11Aa3-1 requires that the Exchange disseminate transaction reports for individual reported securities traded on the Exchange,⁷ and that the Exchange disseminate on a consolidated basis

¹ See Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834.

² See letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Brandon C. Becker, Associate Director, Division of Market Regulation ("Division"), SEC, dated October 4, 1989; and letter from Michael J. Simon, Milbank, Tweed, Hadley & McCloy, counsel for the NYSE, to Kathryn V. Natale, Assistant Director, Division, SEC, dated October 13, 1989.

³ See Securities Exchange Act Release No. 27390 (October 26, 1989), 54 FR 45876.

⁴ See Securities Exchange Act Release No. 26841 (January 31, 1991), 56 FR 4881.

⁵ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, dated July 22, 1991.

⁶ 17 CFR 240.11Aa3-1 (1989).

⁷ Rule 11Aa3-1(c)(1) and (2). Paragraph (a)(4) of rule 11Aa3-1 defines a "reported security" as that for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.

⁸ In addition, the Commission has issued an order which extends the Exchange's exemption from reporting transactions in reported securities and disseminating on a consolidated basis the total trading volume for each component stock in basket transactions, pursuant to Rule 11Aa3-1 under the Act, through January 31, 1992. See Securities Exchange Act Release No. 29507 (July 31, 1991).

⁹ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Christine Sakach, Branch Chief, Division of Market Regulations, SEC, dated July 22, 1991.

¹⁰ 15 U.S.C. 78s(b)(2) (1988).

¹¹ 17 CFR 200.30-3(a)(12) (1990).

trading volume for each of the component stocks represented by ESP transactions.⁸

The NYSE provides trading facilities through the ESP Service for reported securities (as components of baskets) but does not disseminate on a consolidated basis the total daily trading volume for each component stock. The NYSE believed that its proposal to exclude end-of-day transaction volume in the ESP component stocks from the consolidated transaction volume figures was appropriate to provide the Division and the Exchange with an opportunity to assess whether the absence of individual basket component stocks in the end-of-day consolidated volume figures merited modification in light of actual trading experience.⁹

Due to the low volume in basket trading, the NYSE has requested an extension of the exemption for disseminating on a consolidated basis the total trading volume for each component stock. The Commission believes that it is appropriate to extend the conditional relief from rule 11Aa3-1 through January 31, 1992. The NYSE, however, must file a proposed rule change that will provide for the inclusion of end-of-day transaction volume in the ESP component stocks in the consolidated transaction volume figures, on or before December 1, 1991.

III. Conclusion

Based on the factors presented above, the Commission finds that the requested extension of the temporary exemption granted under rule 11Aa3-1 is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 11A of the Act, and rule 11Aa3-1(g) thereunder, that the temporary exemption from the requirement of paragraph (b)(2)(iv) of rule 11Aa3-1 that the Exchange provide for the consolidation of transaction reports be, and hereby is, extended through January 31, 1992.

⁸ Rule 11Aa3-1(b)(2)(iv).

⁹ See letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Brandon C. Becker, Associate Director, Division, SEC, dated October 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18577 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 31, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Sierra Health Services

Common Stock, \$0.01 Par Value (File No. 7-7121)

Universal Health Service, Inc.

Class B Common Stock, \$0.01 Par Value (File No. 7-7122)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-18536 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Swift Energy Company, Common Stock, \$0.01 Par Value (File No. 1-8754)

July 31, 1991.

Swift Energy Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on July 11, 1991, the Company's Common Stock commenced trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before August 21, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-18537 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Areas #7356, #7357, & #7358]

District of Columbia (With Contiguous Counties in Virginia and Maryland); Declaration of Disaster Loan Area

The District of Columbia and the contiguous counties of Arlington and Fairfax and the Independent City of Alexandria in the State of Virginia, and Montgomery and Prince Georges Counties in the State of Maryland constitute an Economic Injury Disaster Loan Area due to damages caused by civil disorders which occurred on May 5 and 6, 1991 in the Mount Pleasant and Adams-Morgan areas. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 27, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to the State of Virginia is 735700 and for the State of Maryland the number is 735800.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 25, 1991.

Patricia Saiki,
Administrator.

[FR Doc. 91-18538 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2516 & #2517]

Missouri (And Contiguous Counties in Illinois); Declaration of Disaster Loan Area

St. Louis County, the contiguous counties of Franklin, Jefferson, and St. Charles, and the Independent City of St. Louis in the State of Missouri, and Madison, Monroe, and St. Clair Counties in the State of Illinois constitute a disaster area as a result of damages caused by flooding which occurred on July 9-10, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 26, 1991 and for economic injury until the close of business on April 27, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft.

Worth, TX 76155 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 251606 for the State of Missouri and 251706 for the State of Illinois. For economic injury the numbers are 735900 for Missouri and 736000 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 26, 1991.

Patricia Saiki,
Administrator.

[FR Doc. 91-18539 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0050]

Fidelity America Small Business Investment Co.; Surrender of License

Notice is hereby given that Fidelity America Small Business Investment Co., ("FASBIC"), 128 Fayette St., Conshohocken, PA 19428, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). FASBIC was licensed by the Small Business Administration on January 4, 1963.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 17, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 28, 1991.

Bernard Kulik,
Associate Administrator for Investment.

[FR Doc. 91-18540 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-A (Revision 4)]

Delegation of Authority; Redelegation of Financial Assistance

Delegation of Authority No. 12-A (Revision 3) (49 FR 5411) is hereby superseded by Delegation of Authority No. 12-A (Revision 4). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. Delegation of Authority No. 12-A (Revision 4) reads as follows:

I. Pursuant to the action of the Administrator, Small Business Administration, dated February 12, 1990, the following authority is hereby delegated to the specific positions designated herein as follows:

A. To the Assistant Administrator for Financial Assistance as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans, and approval or decline of guarantees of debentures, authorized to be made under section 7(a) of the Small Business Act and title V of the Small Business Investment Act of 1958 including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans and debentures.

b. To cancel, reinstate, modify, and amend authorizations for any such loans and debentures.

c. To determine eligibility for loan and debenture financing applicants.

d. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

e. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and debentures and any other obligations and acquired property related to them; with the exception of legal action to be taken with respect to loans or debentures classified as in litigation.

f. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action

taken with respect to any such loans classified as in litigation.

g. To take all necessary actions in connection with the financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act.

2. Participating Lender Program

a. To take all necessary actions in connection with determinations of eligibility for lending institutions and Development Companies to participate in SBA lending and financial assistance programs in accordance with the Small Business Act and title V of the Small Business Investment Act of 1958, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary actions in connection with the regulation of lending institutions and Development Companies participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and title V of the Small Business Investment Act of 1958 and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions and Development Companies.

3. Initial Placement and Secondary Market Activity

a. To plan, direct, and administer secondary market activity as it relates to loan servicing and processing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain secondary market activity, including loan pooling.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guaranty agreements.

4. Lease Guaranty Activities

a. To take all necessary actions in connection with the administration and servicing of reinsured lease rental guaranty insurance policies (hereinafter referred to as "lease guarantees") entered into pursuant to title IV of the Small Business Investment Act of 1958.

b. To process claims arising out of lease guarantees.

c. To take all necessary actions in connection with the default of all direct lease guarantees, except for legal action

with respect to matters classified as in litigation.

5. Pollution Control Financing Guaranty Activities

a. To approve or decline applications for pollution control financing guarantees authorized to be made by the Agency pursuant to title IV of the Small Business Investment Act of 1958, including reconsideration thereof, and to execute commitments and modifications thereto and guarantees pertaining to such financing.

b. To determine eligibility and make site determinations of applicants for pollution control financing guarantees.

c. To take all necessary actions in connection with the servicing, administration of pollution control financing guarantees, and the collection, and payment of claims arising as a result of any default of a pollution control financing guaranty upon default of a benefited small business, with the exception as in litigation.

d. To enter into participation agreements with qualified companies and to revise such agreements when necessary.

e. To amend, suspend, or revoke authority delegated to any position listed below.

B. To the Director, Office of Financing as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans authorized to be made under section 7(a) of the Small Business Act including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans.

b. To cancel, reinstate, modify, and amend authorizations for any such loans.

c. To determine eligibility for loan applicants.

d. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and any other obligations and acquired property related to them; with the exception of legal action to be taken with respect to loans or any other obligation classified as in litigation.

e. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to any such loans classified as in litigation.

f. To take all necessary actions in connection with the servicing of financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act.

2. Participating Lender Program

a. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs in accordance with the Small Business Act, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary action in connection with the regulation of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions.

3. Initial Placement and Secondary Market Activity

a. To plan, direct, and administer secondary market activity as it relates to loan servicing and processing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain secondary market activity.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guaranty agreements.

4. Lease Guaranty Activities

a. To take all necessary actions in connection with the administration and servicing of reinsured lease rental guaranty insurance policies (hereinafter referred to as "lease guarantees") entered into pursuant to title IV of the Small Business Investment Act of 1958.

b. To process claims arising out of lease guarantees.

c. To take all necessary actions in connection with the default of all direct lease guarantees, except for legal action with respect to matters classified as in litigation.

5. Pollution Control Financing Guaranty Activities

a. To approve or decline applications for pollution control financing guarantees authorized to be made by the Agency pursuant to title IV of the Small Business Act of 1958, including reconsideration thereof, and to execute commitments and modifications thereto and guarantees pertaining to such financing.

b. To determine eligibility and make size determinations of applicants for pollution control financing guarantees.

c. To take all necessary actions in connection with the servicing, administration of pollution control financing guarantees, and the collection, and payment of claims arising as a result of any default of a pollution control financing guaranty upon default of a benefitted small business, with the exception of legal action to be taken with respect to guarantees classified as in litigation.

d. To enter into participation agreements with qualified companies and to revise such agreements when necessary.

6. To amend, suspend, or revoke authority delegated to any position listed below.

a. Chief, Loan Policy and Procedures Branch

1. To approve or decline applications for all loans, excluding disaster loans, authorized to be made by the Agency pursuant to the Small Business Act, including reconsideration thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for any such loan.

3. To determine eligibility of any applicant for any such loan.

b. Chief, Office of Financial Institutions

1. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs authorized by the Small Business Act, including the suspension or revocation of such eligibility provided, however, that any final determination regarding eligibility, suspension, or revocation of such eligibility shall be retained by the Assistant Administrator for Financial Assistance.

2. To take all necessary actions in connection with the regulation of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and the regulations promulgated thereunder.

3. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions.

c. To the Director, Office of Portfolio Management as follows:

1. To take all necessary action in connection with the servicing, administration, collection, and liquidation of all loans, debentures, direct lease guarantees (including automatic terminations provided for within the Policy), pollution control financings, made or guaranteed pursuant to the Small Business Act and acquired property related thereto, with the exception of legal action taken with respect to those loans and other obligations classified as in litigation.

2. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to matters classified as in litigation.

3. To take all necessary actions in connection with the servicing of financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act, as amended, and, as appropriate, financial aspects of contracts let by SBA pursuant to section 8(a) of the Small Business Act, as amended.

4. The authority delegated to the Director, Office of Portfolio Management is redelegated to the specific positions designated herein as follows:

a. Chief, Operations Assistance Branch

1. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and debentures, direct lease guarantees (including automatic terminations provided for within the Policy), pollution control financing, and other obligations and acquired property within all loan programs of the SBA, with the exception of legal action taken with respect to those loans and other obligations classified as in litigation.

2. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to loans classified as in litigation.

3. To take all necessary actions in connection with the servicing of financial aspects of certificates of

competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA pursuant to section 8(a) of the Small Business Act, as amended.

D. To the Director, office of Economic Development as follows:

1. To approve or decline development company loan applications and debenture guarantees authorized under title V of the Small Business Investment Act of 1958, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans and debentures.

2. To cancel, reinstate, modify, and amend authorizations for such loans and debentures. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

a. To take all necessary actions in connection with determinations of eligibility for Development Companies to participate in SBA lending and financial assistance programs in accordance with title V of the Small Business Investment Act of 1958, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary action in connection with the regulation of Development Companies participating in SBA lending and financial assistance programs, in accordance with title V of the Small Business Investment Act of 1958, and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to Development Companies.

E. To the Central Office Claims Review Committee as follows:

1. This committee shall consist of the Director, Office of Portfolio Management, acting as chairperson, Director, Office of Financing, and the Associate General Counsel for Litigation, Office of the General Counsel.

2. This committee shall consider, advise upon, and make the final decision to accept or reject reasonable and properly supported compromise proposals, regarding indebtedness owed to the SBA, with the exception of indebtedness owed by a small business investment company licensed pursuant to section 301(c) or 301(d) of the Small

Business Investment Act of 1958, as amended.

II. This delegation does not authorize anyone serving in the above specified positions (except as set forth in I(E) above):

A. To sell any primary obligations or other evidence of indebtedness owned to the Agency for a sum less than the total amount due thereunder.

B. To deny liability of the SBA under terms of a participation or guaranty agreement, or the initiation of a suit for recovery from a participation or guaranty agreement.

C. To accept or reject a compromise settlement of an indebtedness owed the Agency for a sum less than the total amount due thereon.

III. The authority delegated herein may not be redelegated.

IV. The authority delegated to any position indicated herein may be exercised by any SBA employee officially designated as Acting in that position.

Dated: July 25, 1991.

Patricia F. Saiki,
Administrator.

[FR Doc. 91-18377 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on July 29, 1991

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 29, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION: Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "FOR FURTHER INFORMATION CONTACT:" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 29, 1991.

DOT No: 3519.

OMB No: New.

Administration: National Highway Traffic Safety Administration.

Title: Survey of Families of Head Injured Persons in the National Head Injury Foundation Database.

Need for Information: To gather needed information on costs and injuries of head injured persons.

Proposed Use of Information: The National Head Injury Foundation needs information on the service utilization history and consequences of head injury in order to provide help to families and to develop prevention activities. The Agency also needs additional cost data on head injuries for regulatory analyses.

Frequency: One-time only.

Burden Estimate: 200 hours.

Respondents: Individuals.

Form(s): Questionnaire.

Average Burden Hours Per Response: 1 hour.

DOT No: 3520.

OMB No: 2115-0571.

Administration: U.S. Coast Guard.

Title: Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports.

Need for Information: This information collection requirement is needed by the U.S. Coast Guard to ensure that offshore supply vessels (OSV), based overseas, are inspected before they are put into service. The owners and operators of OSV's submit certified examination reports and statements to the Coast Guard as an alternative to the Coast Guard reinspecting these vessels.

Proposed Use of Information: This information collection requirement will be used by the U.S. Coast Guard as an alternative to Coast Guard marine inspectors conducting reinspection examinations on offshore OSV's that operate in overseas locations. Marine Inspectors will issue vessel's certificates of inspection with a letter or endorsement containing specific information concerning the person who performed the examination; also to ensure that these vessels remain fit for the route and service specified in the certificate of inspection.

Frequency: On occasion.

Burden Estimate: 780 hours.

Respondents: Owners or Operators of Offshore Supply Vessels.

Form(s): None.

Average Burden Hours Per Response: 7 hours and 30 minutes.

DOT No: 3521.

OMB No: 2115-0094.

Administration: U.S. Coast Guard.

Title: Safety Approval of Cargo Containers.

Need for Information: This information collection requirement is needed by the U.S. Coast Guard to enforce and carry out the provisions of the Convention for Safe Containers (SCS). The recordkeeping requirement ensures that adequate documentation is available to verify that an individual container or an entire design type has been designed and tested. It also ensures that containers are maintained in safe condition and that periodic examinations are carried out in accordance with the CSC.

Proposed Use of Information: This information collection requirement will be used by the U.S. Coast Guard for (1) receiving specific design information for plan review and approval, (2) receiving information concerning the continuous examination program (3) to ensure when additional containers are being manufactured, to any approved design, no unauthorized changes are made, (4) ensure adequate documentation is

available to verify the approval of an individual container or design type, (5) ensure periodic examinations are carried out as required, and (6) ensure that container handlers and authorities in other countries will allow free movement of U.S. Containers in foreign trade.

Frequency: On occasion.

Burden Estimate: 69,085 hours.

Respondents: Containers owners, operators, manufacturers and delegated approval authorities.

Form(s): None.

Average Burden Hours Per Response: 4 hours and 46-1/2 minutes.

DOT No: 3522.

OMB No: 2115-0015.

Administration: U.S. Coast Guard.

Title: Shipping Articles, Forecastle Card, and Master's Report of Seamen Shipped or discharged.

Need for Information: The need for this information collection by the U.S. Coast Guard is to ensure that various navigational statutes are being complied with for its commercial vessel safety program.

Proposed Use of Information: This information will be used by the U.S. Coast Guard for vessel manning laws and regulations; provide a written contract and record for seamen's protection and relief. Seamen will also use this information to obtain their benefits or entitlements.

Frequency: On occasion.

Burden Estimate: 848 hours.

Respondents: 13,650.4.

Form(s): CG-704, CG-705-A and CG-735T.

Average Burden Hours Per Response: 1 hour and 10 1/2 minutes.

DOT No: 3523.

OMB No: 2115-0017.

Administration: U.S. Coast Guard.

Title: Application for Approval of Marine Event.

Need for Information: This information collection is needed by the U.S. Coast Guard to provide effective control over regattas and marine parades conducted on the navigable waters of the U.S. to ensure the safety of life and property.

Proposed Use of Information: The U.S. Coast Guard will use this information to provide effective control over marine parades and regattas and determine what impact these events may have on navigation and the environment.

Frequency: On occasion.

Burden Estimate: 4000 hours.

Respondents: Applicants for marine parades or regattas.

Form(s): CG-4423.

Average Burden Hours Per Response: 1 hour.

DOT No: 3524.

OMB No: 2115-0037.

Administration: U.S. Coast Guard.

Title: Importation of Noncomplying Recreational Boats and Products Subject to U.S. Customs Regulations and U.S. Coast Guard Regulations (CG-5096).

Need for Information: This information collection requirement is needed by both the U.S. Coast Guard and Bureau of Standards for recreational boats imported into the United States that are not in compliance with the safety standards and regulations of both agencies.

Proposed Use of Information: This information collection is used to identify recreational boats imported to the U.S. that are not in compliance with Federal safety standards and regulations of the Coast Guard and Bureau of Standards. This information will help the Coast Guard to identify individuals or companies responsible for notifying their purchasers of any defects needed to be corrected that would create a substantial risk of personal injury to the public.

Frequency: On occasion.

Burden Estimate: 125 hours.

Respondents: Importers of recreational boats and associated equipment.

Form(s): CG-5096.

Average Burden Hours Per Response: 15 minutes.

DOT No: 3525.

OMB No: New.

Administration: Federal Railroad Administration.

Title: Grade Crossing Signal System Safety Regulations.

Need for Information: To provide accurate data regarding instances of grade crossing activation failure.

Proposed Use of Information: This information will be used to craft better solutions to the problems of grade crossing device malfunctions.

Frequency: On occasion, one-time.

Estimated Number of Respondents: 605 Railroads.

Total Estimated Burden: 20,701 hours.

Form(s): FRA-F-6180.83 and FRA-F-6180.87.

Average Burden Hours Per Response: 34 hours and 12 minutes.

DOT No.: 3526.

OMB No.: News.

Administration: National Highway Traffic Safety Administration.

Title: Labeling of Reflective Material for Trailer Conspicuity.

Need for Information: Identification of reflective material as conforming to safety requirements.

Proposed Use of Information: Routine trailer inspection by Federal Highway Administration.

Frequency: On occasion.

Burden Estimate: 200 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Respondent: 1 second.

DOT No.: 3527.

OMB No.: 211530-0106.

Administration: U.S. Coast Guard.

Title: Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

Need for Information: This information collection requirement will be used by the U.S. Coast Guard to ensure that foreign tank vessels carrying oil in bulk, comply with minimum applicable standards prior to issuing the Certificate of Compliance.

Proposed Use of Information: This information collection will be used by the Coast Guard to ensure that: (1) Foreign tank vessels carrying oil in bulk are in compliance with standards prior to issuing the Certificate of Compliance; (2) determine if a vessel's construction, arrangement and equipment meets the applicable standards as promulgated by the regulations and (3) that sufficient information is available to personnel operating these vessels and equipment in compliance with the standards.

Frequency: On occasion.

Burden Estimate: 214 hours.

Respondents: Owners and operators of foreign tank vessels.

Form(s): None.

Average Burden Hours Per Respondent: 4 hours.

DOT No.: 3528.

OMB No.: None.

Administration: Urban Mass Transportation Administration.

Title: Return Questionnaire Addressing Security and Crime Prevention Needs and Requirements of Mass Transportation Employees.

Need for Information: The Questionnaire is Needed to Assist Operators of Mass Transportation in the Development of Effective Security Awareness Techniques for Transit Employees Working in Isolated Situations.

Proposed Use of Information: To provide valuable information for UMTA in its efforts to develop security guidelines and an audiovisual security training program.

Frequency: One time only.

Burden Estimate: 450 hours.

Respondents: State or Local Governments or Other for Profit Organizations.

Form(s): None.

Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3529.

OMB No.: 2120-0020.

Administration: Federal Aviation Administration.

Title: Certification: Mechanics, Repairmen, Parachute Riggers, FAR-65.

Need for Information: The information is needed to determine eligibility for certification of mechanics, repairmen, and parachute riggers.

Proposed Use of Information: The information is used for the purpose of certification and the issuance of inspection authorizations.

Frequency: On occasion.

Burden Estimate: 30,136 hours.

Respondents: Individuals.

Form(s): FAA Forms 8610-1 and 8610-2.

Average Burden Hours Per

Respondent: 20 minutes.

DOT No: 3530.

OMB No: 212-0424.

Administration: Federal Aviation Administration.

Title: Aircraft Registration (NPRM Stage).

Need for Information: The information is needed by the FAA to maintain a registration system for aircraft identification and a centralized public record of aircraft ownership. Such a system is required by international treaty and by statutory law.

Proposed Use of Information: The information is used by the FAA to register an aircraft or hold an aircraft in trust.

Frequency: On occasion.

Burden Estimate: 83,111 burden hours.

Respondents: Any individual or organization wishing to register an aircraft.

Form(s): AC Forms 8050-1, 8050-2, 8050-4, 8050-81, 8050-98, 8050-117, 8050-130, 8050-131, and 8050-132.

Average Burden Hours Per

Respondent: 30 minutes per response for 8050-1, 2, 4, 81, 98, and 117; and 45 minutes for 8050-130, 131, and 132.

DOT No: 3531.

OMB No: 2120-0024.

Administration: Federal Aviation Administration.

Title: Dealer's Aircraft Registration Certificate Application, AC Form 8050-5 (NPRM Stage).

Need for Information: The information is needed to enable the Aircraft Registry to determine eligibility of an applicant to receive a Dealer's Certificate and issue the certificate to the correct name and address.

Proposed Use of Information: The information is used to issue Dealer's Certificates to any individual or company engaged in manufacturing, distributing, or selling aircraft who wants to fly those aircraft with a

dealer's certificate instead of registering them permanently in his name. The information is also used to provide a system of identification of aircraft dealers.

Frequency: On occasion.

Burden Estimate: 2,101.5 hours.

Respondents: Individuals and companies engaged in manufacturing, distributing, or selling aircraft.

Form(s): AC Form 8050-5.

Average Burden Hours Per

Respondent: 1 hour and 30 minutes.

DOT No: 3532.

OMB No: 2132-0544.

Administration: Urban Mass Transportation Administration.

Title: Pre-Award, Post-Delivery Audit requirements under Buy America.

Need for Information: All Bidders on UMTA-supported projects must certify compliance with the general or specific requirements of Buy America.

Proposed Use of Information: UMTA grantees and bidders on UMTA funded contracts to assure that the products being purchased comply with statutory requirements.

Frequency: Occasional, per order.

Burden Estimate: 4,250 hours.

Respondents: Grantees and bidders on UMTA funded projects.

Form(s): Pre-Award, Post-Delivery Buy America, In-plant inspection.

Average Burden Hours Per

Respondent: 6 minutes.

DOT No: 3533.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Airport Storm Water Questionnaire.

Need for Information: The Environmental Protection Agency has new storm water regulations that will affect airports. The FAA needs the information to help us prepare appropriate guidance to airport facilities needed to comply with the new regulations.

Proposed Use of Information: The FAA will use the information collected to help develop technical guidance for airports on how to manage deicing and other potential pollutant-generating activities to minimize pollutant discharge and comply with storm water regulations.

Frequency: One time questionnaire.

Burden Estimate: 270 total hours.

Respondents: Airport operators/managers.

Form(s): Questionnaire.

Average Burden Hours Per

Respondent: 3 hours.

DOT No: 3534.

OMB No: 2105-0517.

Administration: DOT, Office of the Secretary.

Title: Transportation Acquisition Regulation (TAR).

Need for Information: To allow DOT to establish contracts and monitor contractor compliance.

Proposed Use of Information: To allow DOT to establish contracts and monitor contractor compliance.

Frequency: On occasion.

Burden Estimate: 74,610.

Respondents: 4,670.

Form(s): TAR.

Average Burden Hours Per

Respondent: 15 hours and 59 minutes.

Issued in Washington, DC on July 29, 1991.

Cynthia C. Rand,

Director of Information Resource Management.

[FR Doc. 91-18525 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended July 26, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47657.

Date filed: July 24, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 501 (Iceland-Egypt Fares).

Proposed Effective Date: August 1, 1991.

Docket Number: 47660.

Date filed: July 25, 1991.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/P 0460 dated July 16, 1991, Expedited Europe-South Asian Subcontinent R-1 To R-3.

Proposed Effective Date: September 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Service Divisions.

[FR Doc. 91-18526 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map

T.F. Green State Airport

Providence, Warwick, Rhode Island

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure

maps submitted by Rhode Island Department of Transportation (RIDOT) for T. F. Green State Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 23, 1991.

FOR FURTHER INFORMATION CONTACT: John Silva, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for T.F. Green State Airport are in compliance with applicable requirements of part 150, effective July 23, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps.

The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by RIDOT. The specific maps under consideration are "Revised Noise Exposure Maps for T. F. Green State Airport: DNL Contour for 1989 Operations" and "Revised Noise Exposure Maps for T. F. Green State Airport: DNL Contour for 1994 Operations". The FAA has determined that these maps for T. F. Green State Airport are in compliance with applicable requirements. This determination is effective on July 23, 1991. FAA's determination on an airport operator's noise exposure maps is

limited of a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 018033.
Rhode Island Department of Transportation, Division of Airports, T. F. Green State Airport, Warwick, Rhode Island 02886.

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT**".

Issued in Burlington, Massachusetts, July 23, 1991.

Vincent A. Scarano,
Manager, Airports Division, New England Region.

[FR Doc. 91-18557 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

Availability of the Airspace Analysis Model

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public that the FAA is making available the latest version of the Airspace Analysis Model (AAM) used in the determination of potential electromagnetic interference from FM broadcast stations to aviation-related navigational aids. The AAM is used in calculating whether an electromagnetic emission would have an adverse effect on air navigation pursuant to the Federal Aviation Act of 1958, as amended. Any interested party who wishes to receive a copy on computer disc, may submit a request and three (3) blank 5¼ inch 1.2 megabyte diskettes to the person listed below under "For Further Information Contact." The current version of the AAM is 4.01. From time to time, the FAA will amend or update the model and revise the version number. Unless otherwise requested, the FAA will mail the version of the AAM in effect on the date of mailing.

ADDRESSES: Comments on the AAM may be submitted to: Federal Aviation Administration, Systems Maintenance Service, Attention: David F. Morse, Director, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gerald Markey, Manager, Spectrum Engineering Division, ASM-500, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION: Comments on the AAM may be submitted to the FAA at the address listed below. Comments should be submitted in triplicate. One copy of each comment submitted will be forwarded to the Federal Communications Commission, Office of the General Counsel.

Issued in Washington, DC on July 23, 1991.

David F. Morse,
Director, Systems Maintenance Service.

[FR Doc. 91-18558 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Availability of the Federal Radionavigation Plan

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Availability for comment.

SUMMARY: The 1990 edition of the Federal Radionavigation Plan has been published and is available for comment.

DATES: Comments must be received by February 07, 1992.

ADDRESSES: Comments should be forwarded to Chairman, DOT Navigation Working Group, U.S. Department of Transportation (DRT-20), room 9402, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Heywood Shirer, Department of Transportation (DRT-20), 400 7th Street SW., Washington, DC, 20590, (202) 366-4355.

SUPPLEMENTARY INFORMATION: A copy of the Federal Radionavigation Plan is available for inspection in the RSPA Dockets Unit. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Telephone (202) 366-5046.

The 1990 Federal Radionavigation Plan is available from:

1. National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161
Stock Number: PB91-190868.
Paper Copy: \$23.00.
Microfiche: \$8.00.
2. Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
S/N 008-047-00402-8
Paper Copy: \$12.00.

Issued in Washington, DC, on July 31, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-18523 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-80-M

Aviation, Marine and Land Radionavigation Users Conferences

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of conferences.

SUMMARY: Aviation, Marine and Land Radionavigation Users Conferences will be conducted in Washington, DC, on

November 19 and 20, and in Seattle, Washington, on December 5, 1991. The purpose of the conferences is to provide users and suppliers of radionavigation equipment with the opportunity to comment on current plans and policies for Federally provided systems which satisfy aviation, marine, and land radionavigation requirements.

DATE, TIME AND PLACE: November 19 and 20, beginning at 8:30 a.m. each day at the Embassy Suites Hotel, 1900 Diagonal St. (across from the King St. Metro Station), Alexandria, Virginia. The November 19 session will focus primarily on marine and land requirements. The November 20 session will focus primarily on aviation requirements. December 5, 1991, beginning at 8:30 a.m. at the Sheraton Hotel and Towers, 1400 Sixth Ave., Seattle, Washington. The December 5 conference will focus on aviation, marine, and land requirements.

FURTHER INFORMATION: For marine and land information, contact Heywood G. Shirer, Research and Special Programs Administration (DRT-20), Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-4355. For aviation information, contact Jerry W. Bradley, NAS Systems Engineering Service, Federal Aviation Administration (ASE-300), Department of Transportation, 800 Independence Avenue SW., Washington, DC 20591, (202) 646-4824.

SUPPLEMENTARY INFORMATION: Each day the meeting will open with an overview of the Federal radionavigation planning process, the Federal Radionavigation Plan, and current plans and policies for Federally operated radionavigation systems. This information relates to the selection of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for organizations or individuals representing the users and suppliers of radionavigation systems to participate in the meeting and to have their comments heard by representatives of the Federal Aviation Administration, Coast Guard, Research and Special Programs Administration, Maritime Administration and other government agencies participating in the conference.

Issued in Washington, DC, on July 31, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-18524 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-80-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Atlantic Financial Federal Savings Bank, San Francisco, CA; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Atlantic Financial Federal Savings Bank, San Francisco, California, on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18596 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Atlantic Financial Savings Bank, F.S.B. San Francisco, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Atlantic Financial Savings Bank, F.S.B., San Francisco, California, OTS No. 8117, on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18598 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Fulton Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Fulton Federal Savings Association, Atlanta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18600 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Southwest Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Southwest Federal Savings Association, Dallas, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-18597 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Westland Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Westland Federal Savings and Loan Association, Rawlins, Wyoming, OTS No. 3556, on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-18599 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-33; OTS No. 3183]

AmeriFed Federal Savings Bank, Joliet, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on July 25, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of AmeriFed Federal Savings Bank, Joliet, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18593 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-34; OTS No. 6721]

Odenton Federal Savings and Loan Association, Odenton, MD, Final Action; Approval of Conversion Application

Notice is hereby given that on July 12, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Odenton Federal Savings and Loan Association, Odenton, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Office of Thrift Supervision, Southeast Region, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-18594 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-35; OTS No. 7035]

Randolph County Federal Savings and Loan Association, Cuthbert, GA; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that on July 31, 1991, the Director of the Office of Thrift Supervision, or his designee approved the application of Randolph County Federal Savings and Loan Association, Cuthbert, Georgia, for permission to convert to the stock form of organization in a voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 31, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91-18595 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Fulbright Foreign Student Enhancement Seminars

AGENCY: United States Information Agency.

ACTION: Notice of request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations, universities and university consortia to implement professional enhancement programs in Washington, DC, Chicago, Illinois and San Francisco, California for Fulbright foreign students in the greater metropolitan area of these cities and students whose travel costs to the program would not exceed an average of \$300 round trip per person. Interested organizations may propose to conduct programs in one or more of the designated cities. However, a separate budget and program agenda must be proposed for each city. The program in each city will consist of a three-day seminar for 150 Fulbright foreign students with an agenda combining some introductory material on the United States with in-depth coverage of an economic, political, or cultural issue characteristic of the region. Programs should take advantage of the local resources of the city.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. e.d.t. on September 30, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration.

Faxed documents will not be accepted, nor will documents postmarked on September, 30, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Programs should be held at a date from January to May 1992. No funds may be expended until the grant agreement has been signed.

ADDRESSES: Fifteen copies of the completed application including required forms should be submitted to the office below: U.S. Information Agency, Bureau of Educational and Cultural Affairs, Ref.: Fulbright Foreign Student Enhancement Seminars, Office of the Executive Director, E/X, room 336, 301 4th St., SW, Washington, DC 20547.

FOR FURTHER INFORMATION: Interested U.S. organizations should write or call Ms. Nancy Searles at USIA, 301 4th Street, SW., room 234, Washington, DC 20547, 202-619-5384.

SUPPLEMENTARY INFORMATION: Overall authority for the program is contained in the Mutual Educational and Cultural Exchange Act of 1961 as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and are subject to final review by the USIA contracting officer.

Guidelines

The major goals of the seminar are: (1) To provide for first year Fulbright students, in an off-campus setting, an introduction to some of the key features of the U.S. economic, political, and social system; (2) to enable them to meet community and civic leaders, people who have had a significant impact on the city or community in which they live; and (3) to broaden and expand students' view of the U.S. beyond the somewhat limited and stereotyped view they may have known prior to their Fulbright grant. The goals will be accomplished through a series of lectures, interactive panel discussions as well as contacts with local leaders and other citizens via home hospitality with American families and field trips.

Program components should include: (1) Interactive discussions, led by experts on intercultural awareness, of some of the distinctive features of U.S. culture as they relate to the customary goals and expectations of foreign students;

(2) Panel discussions, with audience participation, on selected major features of the U.S., such as the role of the private sector and private enterprise in the U.S. economy; the federal system; the role of the media in politics; U.S. society, ethnicity, and the absorption of new immigrants; a regional economic issue, etc.;

(3) Opportunities for representatives of USIA to discuss with the students the goals and structure of the Fulbright Program, its current and future significance to them and the responsibilities as well as rights and privileges of being a Fulbrighter;

(4) Events to allow students to meet with local business, civic, educational, cultural, and media leaders;

(5) Homestays and other home hospitality opportunities so that the students interact on at least one occasion with people other than those typically encountered on campus; and

(6) Field trips to sites of local cultural, historical or recreational interest.

A detailed outline of a proposed seminar agenda should be included in the proposal. The outline should demonstrate the organization's ability to enlist the participation of informed lectures, keynote speakers and/or presenters whose credentials and experience show evidence of in-depth knowledge of seminar topics. Invited speakers should provide international students with access to expertise and insights not otherwise available to them. The application should include information on previous programs conducted for foreign students and detailed information on the volunteer services the organization anticipates using in program implementation. Activities supported by this grant must maintain a non-political character and shall represent, in a balanced way, the diversity of American political, social and cultural life.

Proposals should include a listing of names, titles, addresses, and telephone numbers of the executive officer(s) of the organization and of the person(s) directly responsible for the project. Resumes or vitae of key personnel should be provided. USIA recommends the inclusion of brochures and general information concerning the organization, i.e. the number of employees, the names of board members (or similar group) and evidence of previous experience with international students in the proposal package. USIA grant assistance, not to exceed \$85,000 for each program, is expected to constitute only a portion of total project funding, i.e. cost sharing should be provided.

The budget proposal must include costs for administration such as salaries and other direct costs including communications, reproduction, supplies, meeting rooms, etc. and participant expenses such as travel and per diem. In preparing the program budget, it should be noted that at least one-fourth of the foreign student participants will be students who are attending local academic institutions and will not, therefore, be lodged with the students from out of town. The travel costs for the rest of the students should average \$300 round trip per person.

Inasmuch as cost sharing is required, proposals should list other anticipated

sources of support. Grant applications should demonstrate financial and in-kind support using a multi-column budget format that clearly identifies the following categories by line-item: the amount of USIA support, amount of institutional/organizational in-kind support, amount provided by other funding sources.

Selection Criteria for the Implementing Organization

1. The quality, variety and breadth of the proposed program; past/current services provided to international students by the organization;
2. Ability to recruit recognized experts in the appropriate field to participate as presenters, lecturers, or keynote speakers in the seminar;
3. Ability to recruit and maintain a cadre of volunteers to successfully accomplish the program goals;
4. Evidence of at least a four year track record of success in conducting similar programs;
5. An evaluation component for the attending foreign students to participate in at the conclusion of the seminar; and
6. Cost effectiveness of basic services, including evidence of cost sharing, form, amount, etc.

Technical Requirements

Proposals can only be accepted for review when they include the following documentation:

1. Bureau of Educational and Cultural Affairs Grant Application Coversheet (OMB #3116-0173);
2. Assurance of Compliance with U.S. Information Agency Regulations under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title IX of the Education Amendment of 1972;
3. Certification and Disclosure of Lobbying Activities for Awards of \$100,000 or more;
4. Certification Regarding Debarment, Suspension and other Responsibility Matters, Primary Covered Transactions (form IA-1279) and Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions (form 1280);
5. Certification Regarding Drug-Free Workplace Requirements, Grantees other than Individuals (form 1285); and
6. Evidence of your organization's non-profit (tax-exempt) status and articles of incorporation.

Notification

All applicants will be notified of the results of the review process on or about December 12, 1991. Funded proposals

will be subject to periodic reporting and evaluation requirements.

Dated: July 22, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-18601 Filed 8-5-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Small Business Competitiveness Demonstration Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is a participating agency in the Small Business Competitiveness

Demonstration Program, established by title VII of the "Business Opportunity Development Reform Act of 1988," Public Law 100-656. As a participating agency, VA shall designate its own industry categories targeted for enhanced small business participation. Notice is hereby given that VA has designated new industry categories targeted for enhanced small business participation, due to limited contracting activity in those industry categories published at 54 FR 33326 on August 14, 1989. For all contracting actions in excess of \$25,000 in these industry categories, VA has instituted small business set-aside restrictions.

ADDRESSES: Department of Veterans Affairs, Office of Acquisition and Materiel Management, Acquisition Policy Division (95A), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Department of Veterans Affairs, Office of Small and Disadvantaged Business Utilization (005SB), 810 Vermont Avenue, NW., Washington, DC 20420, (202) 376-6996.

SUPPLEMENTARY INFORMATION: The Small Competitiveness Demonstration Program has two primary objectives: (1) Demonstrate whether small businesses, in specific industry groups, can compete successfully on an unrestricted basis for federal contracts; and (2) Demonstrate whether targeted goaling and management techniques can expand federal contract opportunities for small businesses, in industry categories where such opportunities historically have been low despite adequate numbers of small business contracts in the industry. The following industry categories have been targeted for enhanced small business participation:

FPDS (PSC/SIC)	Description	Previous FY Total Amount	Amount to SB	Percent to SB	Targeted Increase (Per FY) (percent)
D314 (7371)	ADP Acquisition Support Service	\$205,000	\$5,000	2.4	2.5
J058 (3661)	Maintenance & Repair, Telephone/Telegraph Equipment	827,000	127,000	15.0	2.5
J070 (7377)	Maintenance & Repair, General Purpose ADPE	1,539,000	57,000	3.7	2.5
W070 (7377)	Lease, General ADPE	6,254,000	474,000	7.6	2.5
6510 (2211)	Surgical Dressing Materials	7,327,000	817,000	11.0	2.5
6525 (3844)	X-Ray Equipment/Supplies	64,288,000	4,182,000	6.5	2.5
6550 (2835)	Diagnostic Reagents, Kits, Etc	550,000	0	0	2.5
6630 (3559)	Chemical Analysis Instruments	1,176,000	0	0	2.5
6640 (8071)	Laboratory Equipment/Supplies	1,487,000	34,000	2.3	2.5
8940 (2023)	Special Diet Preparations	4,965,000	329,000	6.6	2.5

The Office of Small and Disadvantaged Business Utilization will assist procuring activities in locating additional sources through contacts with Federal agencies, the U.S. Small

Business Administration Procurement Automated Source System (PASS), trade journals, and attendance at local and federal procurement conferences.

Dated: July 25, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

[FR Doc. 91-18552 Filed 8-5-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 151

Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION:

Farm Credit Administration Board;
Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 8, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 803-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

- A. Approval of Minutes
- B. New Business

1. Regulations

a. Parts 613 and 618, Eligibility and Scope of Financing; General Provisions; Financing of Basic Processing and Marketing Activities; Authorized Insurance Services (Proposed)

Closed Session/*

- A. New Business

1. Enforcement Actions.

*Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: August 1, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-18709 Filed 8-2-91; 11:12 am]

BILLING CODE 6705-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 11:00 a.m., Monday, August 12, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18777 Filed 8-2-91; 3:11 pm]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Tuesday, August 13, 1991.

PLACE: Hearing Room, Suite 850, 1425 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1991.

2. NMB Oral Argument Process.

3. Simultaneous Service by Participants in Representation Proceedings.

4. Sky Valet/TCU: CJ-6426 (NLRB Jurisdictional Referral—Skycaps).

5. Precision Valley Aviation/Northeast Express Regional Airlines/ALPA: CR-6354.

6. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: July 31, 1991.

John J. Bavis,

Acting Executive Director, National Mediation Board.

[FR Doc. 91-18708 Filed 8-2-91; 11:12 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 5, 12, 19, and 26, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 5

Monday, August 5

10:00 a.m.

Briefing on AEOD Programs (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

3:00 p.m.

Discussion of Pending Investigations (Closed—Ex. 2, 5, & 7)

Week of August 12—Tentative

Friday, August 16

10:00 a.m.

Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Program Fraud Civil Remedies Act (10 CFR Part 13)—Final Rule (Tentative)

b. Appeal of LBP-91-19 (Arizona Public Service Company, et al. (Palo Verde Nuclear Station, Units Nos. 1, 2 and 3)) (Tentative)

Week of August 19—Tentative

Wednesday, August 21

10:00 a.m.

Briefing by NUMARC on Program for Inspections, Tests, Analyses, and Criteria (ITAAC) for Advanced Reactors (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Briefing by NRC Staff on International Programs (Public Meeting)

Week of August 26—Tentative

Wednesday, August 28

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call
(Recording)—(301) 492-0292.

**CONTACT PERSON FOR MORE
INFORMATION:** William Hill (301) 492-
1661.

Dated: August 1, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-18770 Filed 8-2-91; 3:11 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 5, 1991:

A closed meeting will be held on Tuesday, August 6, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 6, 1991, at 2:30 p.m., will be:

Litigation matter.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272-2100.

Dated: August 2, 1991.

Jonathan G. Katz,
Secretary.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-18785 Filed 8-2-91; 3:48 am]

BILLING CODE 5010-01-M

Register Federal

**Tuesday
August 6, 1991**

Part II

Department of Health and Human Services

Administration for Children and Families

**Administration for Native Americans;
Availability of Financial Assistance;
Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 13612-921]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, HHS.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, Alaskan Natives and Native American Pacific Islanders social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1992 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Native American tribes and organizations through support of social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are October 11, 1991, February 7, 1992 and May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson or Winonah Warren (202) 245-7727, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW, 344F, Washington, DC 20201-0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1992 financial assistance to promote social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders. Native American Pacific Islanders are defined as American Samoan Natives and indigenous peoples of Guam, the Commonwealth of the Northern Marianas, and the Republic of Palau. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93-644, 88 Stat. 2324, 42 U.S.C. 2991b for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the

evaluation criteria in this announcement.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaskan Native villages, and in the leadership of Native American groups. The development of self-sufficiency requires the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities. Achievement of self-sufficiency is based on the community's ability to develop a strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations to develop and implement community-based, long-term governance, and social and economic development strategies (SEDS). These strategies promote the self-sufficiency of local communities. The ANA approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values for its long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to

move toward self-sufficiency. Consequently, comprehensive development strategies address all aspects of the infrastructures needed to become self-sufficient communities.

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent physical, commercial industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.

- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.

- "Social infrastructure" includes those components through which health and well-being are maintained within the community.

Without a careful balance of all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to greater dependency on social services. Conversely, inadequate social services could seriously impede productivity and local economic development.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is to develop enduring social and economic strategies in keeping with their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake projects that are a part of long-range strategies to achieve social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources, directing those resources to opportunities, and addressing local issues that hinder social and economic growth in the community.

The Administration for Native Americans encourages applicants to design projects to achieve their specific governance, and social and economic goals, that use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be marshalled to strengthen and broaden the proposed

project impact in the community. Project designs should explain the means through which those parts of projects which ANA does not fund, such as construction, will be financed through other sources.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds, at the end of the project period.

Completed means that the project ANA funded is finished, and the desired result(s) have been attained. *Self-sustaining* means that a project will continue without outside resources. *Supported by other than ANA funds* means that the project will continue beyond the ANA project period, but supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely that would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. *Core administration* is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered core administration. However, ANA does fund the salaries of approved staff for time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States. Under its governance goal, ANA strongly encourages tribal and village councils,

and other governing bodies, to strengthen and streamline their institutional management. The purpose is to develop and implement effective social and economic development strategies, and to improve their day-to-day governmental management. By improving such capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Goal 2: Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA supports tribal and village governments' and other Native American organizations' plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies should describe how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, strategies that combine balanced social and economic and governance goals should target independent sources of revenue for the community which will decrease dependency on public funds.

C. Eligible Applicants

Current ANA grantees whose project period terminates in fiscal year 1992 (October 1, 1991—September 30, 1992) are eligible to apply for a grant award

under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA grantees, the following organizations are eligible to apply:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States.
- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

Under section 803 of the Native American Programs Act of 1974, as amended, colleges and universities are not eligible applicants unless they serve Native Hawaiians or the other Native American Pacific Islanders.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third budget periods.

Note: A separate program announcement for fiscal year 1992 funding will also be published specifically for Alaskan Native applicants (Program Announcement 13612-922). In fiscal year 1992, Alaskan Native entities are eligible to submit an application under either announcement, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

- (1) October 11, 1991 closing date of Program Announcement 13612-921; and
- (2) February 7, 1992 closing date for Program Announcement 13612-921 OR

for Program Announcement 13612-922; and

(3) May 15, 1992 closing date for Program Announcement 13612-921 OR for Program Announcement 13612-922.

The following chart may be of assistance in understanding under what dates an Alaskan Native applicant is eligible to apply.

13612-921	13612-922
(Application to be submitted to Washington DC)	(Application to be submitted to Seattle WA)
October 11, 1991	
and/or	
February 7, 1992	February 7, 1992.
and/or	
May 15, 1992	May 15, 1992.

Thus, Alaskan Native groups now have the same three closing date opportunities as the rest of ANA's constituency. Those Alaskan Native organizations which want to develop plans, programs and projects to compete with other applicant groups under this program announcement (13612-921) are now able to compete for project money that does not have a specific project funding limit.

D. Available Funds

Approximately \$14 million of financial assistance is available under this program announcement for American Indian, Alaskan Natives, Native Hawaiian, and Native American Pacific Islander projects. This program announcement is being issued in anticipation of appropriation of funds, and is contingent upon that appropriation.

Each tribe, Native American organization, or other eligible applicant can receive only one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, that is, a project on a single theme requiring more than 12 months to complete, affords applicants the opportunity to develop more complex, and in-depth, projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should understand that a multi-year project is a project on a single theme that requires more than 12 months to complete. The project cannot be a series of unrelated projects or activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved work plan, the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees, with the exception of organizations in the Native American Pacific Islands, must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95-134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under \$200,000 (including in-kind contributions). Applications from groups in the United States serving Native American Pacific Islanders in the United States are required to provide a 20 percent match or apply for a waiver under 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the ANA Application Kit. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from:

Department of Health and Human Services,
Administration for Children and Families,
Administration for Native Americans, room
344F, Hubert H. Humphrey Building, 200
Independence Avenue, SW., Washington,
D.C. 20201-0001, Attention: No. 13612-921,
(202) 245-7730.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to:

Department of Health and Human Services,
Administration for Children and Families,
Discretionary Grants Management Branch,
room 341F.2, Hubert H. Humphrey Building,
200 Independence Avenue, SW.,
Washington, DC 20201-0001, Attention:
ANA 13612-921.

Note: If the applicant is from Alaska, the applicant is to send the application to the above address, not to the ANA Seattle Regional Office.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement. The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria in this announcement. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's decision also takes into account the comments of ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration

for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded and the amount of the non-Federal matching share requirement, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

I. Review Process and Criteria

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement) and the probability of self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other. They are considered jointly in judging the overall quality of an application. Points will be given only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application presents specific long-range community goals related to the proposed project. It explains how the community's intent to achieve these goals has been identified and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are presented within the context of a comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources may be human, natural or financial, and may

include other Federal and non-Federal resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20 percent match for the non-Federal share if it is under \$200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all of ANA's applicants.

(2) Organizational Capabilities and Qualifications. (10 points)

a. The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

b. Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project objectives and activities related to the overall long-term goals. The Objective Work Plan in the application includes project objectives and activities for each budget period proposed and demonstrates that these objectives and activities:

- Are measurable and/or quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance or social and economic development;
- Clearly relate to the community's long-range goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective, will be accomplished;
- Specify who will conduct the activities under each objective; and

- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

The proposed project will result in specific, measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the community meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget. (10 points)

There is a detailed budget provided for each budget period requested. (This is especially necessary for multi-year applications.) The budget is fully explained. It justifies each line item in the budget categories in section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement.) Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance

- The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development. The Administration for Native Americans does not fund on the basis of need alone.

- In discussing the problems being addressed in the application, sufficient background and/or history of the community concerning these problems, and progress to date, as well as the size of the population to be served, should be included so that the appropriateness and potential of the proposed project in strengthening the self-sufficiency of a community will be better understood by reviewers.

- An application should demonstrate a clear linkage between the proposed project and the community's long range goals or plan.

- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the project, and the positive or continuing impact on the community the project will have.

- Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and commitments of resources to the implementation or conduct of the project.

In the ANA Project Narrative, section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate the feasibility and practicality of a proposed economic development project if the applicant includes a business plan to support the feasibility of the project. (ANA has included sample business plans in the application kit.) It is strongly recommended that an applicant use these as a guide in the development of an application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.

- A multi-purpose community-based Native American organization is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, day care, counseling, education, and training.

(2) Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application

kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

- There is no maximum or minimum amount of Federal funds that may be requested.

- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

- The Administration for Native Americans will accept only one application for each closing date. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

An application from an Indian tribe or other applicant must be from the governing body of the applicant.

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

- The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

- Two copies of the application plus the original are required.

- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

- The Approach page (section B of the ANA Program Narrative) for each objective proposed should be of sufficient detail to become a monthly staff guide of responsibilities should the applicant be funded.

- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form

424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

- Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92.)

- Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and describe the results to be achieved by the end of each budget period of the total project period.

(3) Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

- Projects that include feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. The Administration for Native Americans is not interested in funding 'wish lists' of business possibilities. The Administration for Native Americans expects evidence of solid investment of time and thought on the part of the applicant to any development of business plans, etc., prior to the submission of the application.

- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

- Core administration functions, or other activities, that essentially support

only the applicant's on-going administrative functions.

- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).

- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create a positive impact in the communities of its members.

- Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

- The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch.3, section E.).

- Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications with which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully

justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 11, 1991, February 7, 1992, and May 15, 1992.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

- (1) Received on or before the deadline date at the address specified in section H, Application Submission, or

- (2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines

The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: June 28, 1991.

S. Timothy Wapato,
Commissioner, Administration for Native Americans.

Approved: July 12, 1991.

Donna N. Givens,
Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-18533 Filed 8-5-91; 8:45 am]

BILLING CODE 4130-01-M

Federal Register

**Tuesday
August 6, 1991**

Part III

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 7 and 52

**Federal Acquisition Regulation; Lease
With Option To Purchase; Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 7 and 52**

(FAR Case 91-6)

**Federal Acquisition Regulation; Lease
With Option To Purchase**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amending FAR subpart 7.4 and adding a clause at 52.207 based on the Defense Management Review (DMR). This includes information required to support a decision to use a lease with an option to purchase and outlines the Government's right to purchase at any time during the performance of the contract.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-6 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-6.

SUPPLEMENTARY INFORMATION:**A. Background**

The Secretary of Defense directed that the Defense Federal Acquisition Regulation Supplement (DFARS) be streamlined and rewritten as part of the DMR Regulatory Reform initiative. This initiative entails deletion of some DFARS language, consolidation of DFARS language, movement of DFARS language to the FAR, redefinition of policies and procedures, and editing and rewrite of the total book. The proposed additions are a result of language being deleted from lower level supplements for more appropriate insertion into the

FAR, since it is applicable to all Federal buying activities.

FAR 7.402(b)(2) states that if a lease is justified, a lease with option to purchase is preferable. However, there is no FAR coverage to implement this requirement. The proposed coverage implements FAR 7.402(b)(2) and outlines the Government's right to purchase at any time during the performance of the contract.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed changes do not impose any new requirements on contractors, and it is a change to internal operating procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-6) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 7 and 52

Government procurement; lease with option to purchase.

Dated: May 28, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 7 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.402 is amended by adding paragraph (b)(4) to read as follows:

7.402 Acquisition methods.

* * *

(b) * * *

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price

will be established at the time of purchase.

3. Section 7.404 is added to read as follows:

7.404 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.207-X, Option To Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

4. Section 52.207-X is added to read as follows:

**§ 52.207-X Option To Purchase
Equipment.**

As prescribed in 7.404, insert a clause substantially the same as the following:

Option To Purchase Equipment (XXX 1991)

(a) The Government has the right to purchase the equipment provided on a lease or rental basis under this contract at any time during the period of the contract, including any contract extensions. The Contracting Officer may exercise the option only by written notice to the Contractor. The written notice will specify the effective date of the purchase.

(b) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the written notice required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract. The accumulated purchase option credits available to determine the purchase conversion cost will include any credits accrued during a previous period of lease or rental of the equipment under any Government contract, and are calculated from the time the equipment has been on continuous rental. The movement of equipment from one site to another site shall be interpreted as "continuous rental".

(c) When the Contracting Officer exercises the option to purchase, the lease or rental portion of the contract becomes complete as of the effective date specified in the written notice required in paragraph (a) of this clause, except for final payment and transfer of title to the Government.

(d) The equipment converted to purchase shall be discontinued from lease or rental on the day immediately preceding the effective date of purchase.

(e) The Contractor shall allow the Government to transfer accumulated purchase option credits and the right to convert from lease to purchase to successor contracts for equipment subject to lease with option to purchase under this contract.

(End of clause)

[FR Doc. 91-18531 Filed 8-5-91; 8:45 am]

BILLING CODE 6820-34-41

Executive Order

**Tuesday
August 6, 1991**

Part IV

The President

**Proclamation 6320—Agreement on Trade
Relations Between the United States of
America and the Union of Soviet
Socialist Republics**

August 7, 1951

The President

Address to the Congress
on the State of the Union
January 6, 1951

Mr. President, I am pleased to have the opportunity to address the Congress on the State of the Union. The past year has been a year of great achievement for our country. We have made significant progress in the field of foreign policy, and we have taken important steps to strengthen our national defense. We have also made considerable gains in the area of domestic affairs, and we have taken effective measures to combat the forces of communism. I am confident that our country is on a path of steady progress, and I am sure that we will continue to achieve great things in the years ahead.

Presidential Documents

Title 3—

Proclamation 6320 of August 2, 1991

The President

Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

By the President of the United States of America

A Proclamation

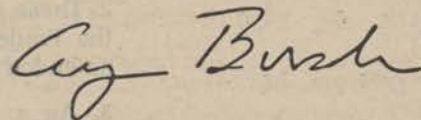
1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Union of Soviet Socialist Republics to conclude an agreement on trade relations between the United States of America and the Union of Soviet Socialist Republics.
2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").
3. As a result of these negotiations, an "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics," including annexes and exchanges of letters which form an integral part of the Agreement, the foregoing in English and Russian, was signed on June 1, 1990, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.
4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).
5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.
6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.
7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Union of Soviet Socialist Republics, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**. On such date, and without prejudice to the long-standing U.S. policy of not recognizing the forcible incorporation of Estonia, Latvia, and Lithuania into the Soviet Union, nondiscriminatory tariff treatment shall also be extended to the products of Estonia, Latvia, and Lithuania.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) to the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in Rates of Duty Column 2 of the tariff schedule, is modified by striking out "Estonia", "Latvia", "Lithuania", and "Union of Soviet Socialist Republics".

IN WITNESS WHEREOF, I have hereunto set my hand this second day of August, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



Billing code 3195-01-M

**AGREEMENT ON TRADE RELATIONS BETWEEN
THE UNITED STATES OF AMERICA AND
THE UNION OF SOVIET SOCIALIST REPUBLICS**

The United States of America and the Union of Soviet Socialist Republics (hereinafter referred to collectively as "Parties" and individually as "Party"),

Recognizing that the development of bilateral trade may contribute to better mutual understanding and cooperation,

Taking into account the favorable implications for trade expansion of the economic restructuring and the development of a market-based economy in the USSR,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party, and promote respect for internationally recognized rights of working people,

2

Acknowledging that the development of trade relations and direct contact between Soviet organizations and United States nationals and companies will promote openness and mutual understanding,

Considering that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Reaffirming their desire to develop economic cooperation in accordance with the principles and provisions of the Final Act signed in Helsinki on the 1st of August, 1975, and other documents of the Conference on Security and Cooperation in Europe, and in accordance with the Document of the Conference on Economic Cooperation in Europe held in Bonn in March-April 1990,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between Soviet organizations and United States nationals and companies,

Have agreed as follows:

3

ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) rules concerning sale, purchase, transport, distribution, storage and use of products on the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party

nondiscriminatory treatment with respect to the allocation of the currency needed to pay for such imports.

4. The provisions of paragraphs 1, 2 and 3 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to third countries for the facilitation of frontier traffic;

(c) advantages accorded to third countries in accordance with the General Agreement on Tariffs and Trade (the "GATT"), and advantages accorded to developing countries under the GATT and other international agreements; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

ARTICLE II

GENERAL OBLIGATIONS WITH RESPECT TO MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Recognizing the mutual benefit to trade relations on the basis of this Agreement and consistent with the most favored nation principles expressed in Article I, the Parties shall, on the basis of reciprocity and without detriment to relations with third countries, improve market access for products and services of the other Party and optimize mutual commercial opportunities, including through the satisfactory reciprocation of market opening measures resulting from multilateral negotiations.

Taking the above into account and resulting from the development of market mechanisms in the Soviet Union and its closer relationship with the GATT, opportunities shall be created to increase step by step national treatment for products and services of the United States.

2. Trade in products and services shall be effected by contracts between nationals and companies of the United States and organizations of the Soviet Union concluded in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, delivery and terms of payment.

3. Neither Party shall require or encourage Soviet organizations or U.S. nationals or companies to engage in barter or countertrade transactions. Nevertheless, where nationals, companies or organizations decide to resort to countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

4. Each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like products originating in any third country in relation to technical regulations and standards, including conformity testing and certification. Furthermore, the Parties shall ensure that such technical regulations and standards are not prepared, adopted, or applied in a discriminatory manner, with a view to creating obstacles to bilateral trade, or to protect domestic production.

ARTICLE III

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between Soviet organizations and United States nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Soviet Party expects that, during the term of this Agreement, Soviet organizations shall increase their orders in the United States for products and services, while the United States Party anticipates that the effect of this Agreement shall be to encourage increased purchases by United States nationals and companies of products and services from the Soviet Union. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. The Parties shall encourage interested nationals, companies and organizations of both countries to look for opportunities to expand trade in machinery, equipment and technologies, including creation of favorable financial conditions to carry on trade in such products.

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4. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals, companies and organizations in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE IV

GOVERNMENT COMMERCIAL OFFICES

1. Each Party shall allow government commercial offices to hire directly host country nationals and, subject to its laws and procedures on entry and residence of aliens, third country nationals.

2. Each Party shall ensure unhindered access of host country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals, companies and organizations in the activities of their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall create favorable conditions for access by government commercial office personnel of the other Party to host country officials at both the federal and other levels,

representatives of state enterprises, institutes, foreign trade organizations, cooperatives, joint ventures and other organizations.

ARTICLE V

BUSINESS FACILITATION

1. Each Party shall permit the establishment within its territory of commercial representations of companies and organizations of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of companies and organizations of third countries. If either Party accredits commercial representations, that Party shall establish promptly an expedited accreditation procedure. Through this procedure, a central accrediting authority shall exercise its best efforts to consider an application for accreditation and, in the case of a positive decision, to issue a certificate of accreditation to commercial representations of the other Party all within 60 days of the submission of such application. The accreditation procedure shall be administered with a goal of maximizing the participation in the market of the accrediting Party of companies already operating in that market, new entrants and small companies. Commercial representations of a Party accredited through the above procedure shall be accorded treatment no less favorable than that accorded to accredited commercial representations of third countries, except that they shall not be entitled to the

assistance of the accrediting Party in locating office and residential space.

2. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

3. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

4. Each Party shall permit on a nondiscriminatory basis, at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to office space and living accommodations, whether or not designated for use by foreigners, as well as telecommunications, municipal and social services.

5. Each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

6. Each Party shall permit nationals, companies and organizations of the other Party to advertise their products and services (a) through direct agreement with the advertising media,

including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national, company or organization.

7. Each Party shall permit nationals, companies and organizations of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party, upon request of the other Party, shall make available to interested nationals, companies and organizations of that Party, non-confidential, non-proprietary market information within its possession.

8. Each Party shall permit commercial representations to stock and provide an adequate supply of samples and replacement parts for before and after sales service on a non-commercial basis.

9. Each Party shall facilitate direct contact between end-users in its territory and nationals, companies, and organizations of the other Party. Each Party shall create favorable conditions for direct contacts between its organizations and government institutions whose decisions affect potential sales and purchases of goods and services and nationals, companies, and organizations of the other Party. Each Party shall also encourage direct commercial transactions between Soviet organizations and U.S. nationals and companies, including those which act from either side as producers, end-users or buyers.

10. Each Party shall permit nationals, companies and

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organizations of the other Party to engage and serve as agents or consultants for nationals, companies or organizations of either Party and of third countries on prices and terms mutually agreed between the parties. Each Party shall permit nationals, companies and organizations of the other Party to engage its nationals, companies and organizations that act as distributors, provided that such nationals, companies or organizations are entitled to engage in such activities, on prices and terms mutually agreed between the parties.

11. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals, companies and organizations of the other Party.

12. Nothing in paragraphs 1, 5 or 10 of this Article shall be interpreted to confer any rights under either Party's laws and procedures on entry and residence of aliens.

ARTICLE VI

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor.

2. Each Party shall provide nationals, companies and organizations of the other Party with access to available non-

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confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party, when interested, the opportunity to consult on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VII

FINANCIAL PROVISIONS RELATING TO TRADE
IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between Soviet organizations and United States nationals and companies shall be made in United States dollars or any other freely convertible currency that may be mutually agreed upon by such organizations, nationals and companies.

2. No restrictions shall be placed by either Party upon the export from its territory of freely convertible currencies, including deposits or instruments representative of such currencies, obtained in an authorized manner in connection with trade in products and services by nationals, companies and organizations of the other Party.

3. Nationals, companies and organizations of a Party holding currency of the other Party received in an authorized manner may deposit such currency in authorized financial

institutions located in the territory of the other Party and may maintain and use such currency for local expenses in accordance with applicable laws and regulations of the other Party.

4. Without derogation from paragraph 2, in connection with trade in products and services, each Party shall grant to nationals, companies and organizations of the other Party most-favored-nation treatment with respect to:

(a) opening and maintaining accounts, in both foreign and local currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of freely convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange offered by financial institutions authorized to deal in foreign exchange, and authorized means of obtaining freely convertible currencies; and

(d) the receipt and use of local currency.

ARTICLE VIII

PROTECTION OF INTELLECTUAL PROPERTY

1. Proceeding from the importance of intellectual property and the necessity of its legal protection to promote trade and economic cooperation and acknowledging the necessity of creating

more favorable conditions for adequate and effective legal protection of intellectual property and its enforcement, the Parties have agreed that they shall:

(a) ensure in accordance with the provisions of internal legislation, protection and implementation of intellectual property rights, including copyright on literary, scientific and artistic works including computer programs and data bases, patents and other rights on inventions and industrial designs, know-how, trade secrets, trade marks and service marks, trade names, and protection against unfair competition;

(b) ensure that their international commitments in the field of intellectual property rights are honored.

Accordingly, each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 30, 1883, as revised at Stockholm on July 14, 1967 (the "Paris Convention"), and the commitments made with respect to copyright in the Universal Copyright Convention of September 6, 1952; and

(c) encourage appropriate arrangements between institutions within the United States and the Union of Soviet Socialist Republics to provide protection for intellectual property rights.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party agrees to submit, to their respective legislative bodies, the draft laws necessary to carry out the obligations of this Article and to exert their best efforts to enact and implement these laws. In this connection, the Parties will:

(a) enhance their copyright relations through adherence to the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) (the "Berne Convention");

(b) provide copyright protection for computer programs and data bases as literary works under their copyright laws;

(c)(1) provide protection for sound recordings first fixed by their respective nationals or companies or first published in their national territory;

(c)(2) such protection shall include, among the minimum rights guaranteed to producers of these works, a right of reproduction and a right of public distribution and importation, and notwithstanding the rights of an owner of a particular copy of a sound recording in such copy, the producer of a sound recording shall continue to enjoy the exclusive commercial rental and lending rights in such copy; and

(c)(3) the Parties agree, that immediately after both Parties have enacted protection for sound recordings originating in their respective territories, to take such steps as are necessary under domestic law to extend such protection to sound recordings originating in the other Party's territory;

(d) provide product and process patent protection for all areas of technology (except the Parties may exclude materials useful solely in atomic weapons) for a term of at least 20 years from the filing of an application or at least 17 years from the grant of the patent; and

(e) provide broad protection for trade secrets.

3. Upon the date when both Parties are members of the Berne Union, the protection of works in existence prior to that date shall be determined in accordance with Article 18 of the 1971 Paris Act of the Berne Convention.

4. The Parties shall introduce in their legislative proposals the principles enumerated in the side letters to this Agreement. These side letters shall form an integral part of this Agreement.

5. The Parties agree to constitute a working group on intellectual property matters in accordance with the terms and for the purposes set forth in the side letters attached hereto.

ARTICLE IX

TRANSIT

Each Party shall facilitate the transit of products originating in the territory of the other Party and transported via the territory of the Party in accordance with the laws and regulations in force in the Party.

ARTICLE X**SUBJECTS FOR FURTHER ECONOMIC COOPERATION**

1. The Parties shall take appropriate steps to foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

2. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI**MARKET DISRUPTION SAFEGUARDS**

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. The consultations provided for in paragraph 1 shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate, and for such period of time it deems necessary, to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions introduced in connection with market disruption. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

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5. In the selection of measures under this Article, the Parties shall endeavor to give priority to those measures which cause least disturbance to the achievement of the goals of this Agreement.

6. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply laws applicable to unfair trade.

7. Each Party shall ensure that its domestic legislation and procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals, companies and organizations of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals and companies of the United States and organizations of the Soviet Union. Such arbitration may be provided for by agreements in contracts between such nationals, companies or organizations, or in separate written agreements between them.

3. The parties to individual transactions may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules in which case the parties should designate an Appointing Authority under said Rules in a country other than the United States or the Soviet Union.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country, other than the United States or the Soviet Union, that is a party to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York, June 10, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to consult periodically within the framework of the Joint US-USSR Commercial Commission to review the operation of this Agreement.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

1. As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or an internal subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the

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advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

(b) "commercial representation," means a representation of a company or organization of a Party.

(c) "national," means a natural person who is a national of a Party under its applicable law.

(d) "organization," means, with respect to the United States, a company of the United States and, with respect to the Soviet Union, any economic entity or enterprise (including a company) engaging in foreign trade or other commercial activities with foreign nationals or companies.

ARTICLE XVI

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

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(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article VIII of this Agreement (and related side letters); or

(c) any other measure referred to in Article XX of the GATT.

ARTICLE XVII

ENTRY INTO FORCE, TERM AND TERMINATION

1. This Agreement (including its side letters which form an integral part of the Agreement) shall enter into force upon an exchange of diplomatic notes in which the Parties notify each other that all necessary legal requirements for entry into force have been fulfilled and shall remain in force as provided in this Article.

2. The initial term of this Agreement shall be three years, subject to paragraph 4 below.

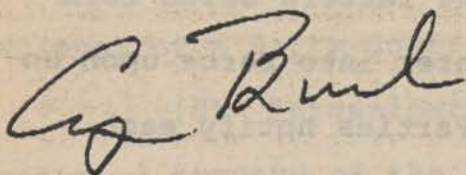
3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

4. Either Party may terminate this Agreement upon written notice to the other Party and in such case the Parties will, to the fullest extent practicable, seek to minimize possible disruption to their trade relations.

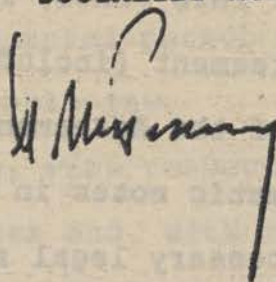
IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington this Firstday of June, 1990, in duplicate, in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

A handwritten signature in dark ink, appearing to read "G. Bush", written in a cursive style.

FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS:

A handwritten signature in dark ink, appearing to read "M. Gorbachev", written in a cursive style.

Washington, June 1, 1990

Dear Mr. Deputy Minister:

I have the honor to confirm receipt of your letter that reads as follows:

Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the Union of Soviet Socialist Republics and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

By the Resolution of the Supreme Soviet of the U.S.S.R. of 6 March 1990, about bringing into force the Soviet Union's "Law on Property in the U.S.S.R.," the Supreme Soviet of the U.S.S.R. has charged the Council of Ministers of the U.S.S.R. in 1990 to introduce for examination by the Supreme Soviet of the U.S.S.R. drafts of the legislative acts of the U.S.S.R. governing relations on the creation and use of inventions and discoveries, scientific, literary and artistic works as well as other objects of intellectual property, which by virtue of their content will create conditions for Soviet participation in the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention").

The Government of the U.S.S.R. will introduce in 1991 the draft laws necessary to fulfill the obligations contained in Article VIII of the Agreement and will undertake all possible measures to enact these laws during 1991. The Government of the U.S.S.R. will seek prompt implementation of these laws.

To fulfill the obligations under paragraphs 4 and 5 of Article VIII of the Agreement, the Government of the U.S.S.R. undertakes the following:

I. The Government of the U.S.S.R. shall incorporate the following principles in its legislative proposals on intellectual property:

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE

1. Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

2. The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

3. Limitations on rights expressly permitted to apply to literary works under the Paris Act of the Berne Convention shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right:

(3.1) to make or authorize the making of a single copy or adaptation of that computer program provided:

(3.1.1) that such new copy or adaptation is created as an essential step in the utilization of the computer program -- in conjunction with a machine and that it is used in no other manner, or

(3.1.2) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed -- in the event that continued possession of the computer program should cease to be rightful.

PROTECTION AGAINST UNFAIR COMPETITION, INCLUDING PROTECTION OF TRADE SECRETS

1. Protection against unfair competition will be implemented in accordance with the provisions of Article 10bis and Article 10ter of the Paris Convention for the Protection of Industrial Property.

2. Trade secrets include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the owner's business and has actual or potential economic value from not being generally known.

3. A trade secret shall be protected whether such trade secret is of a technical or commercial nature, provided that it:

(3.1) has actual or potential commercial value from not being known to the relevant public;

(3.2) is not readily accessible in a lawful manner; and

(3.3) has been subject to appropriate measures to keep it secret.

The trade secret shall be protected as long as these conditions exist.

4. The appropriation, disclosure, and use of a trade secret without the consent of the owner shall be unlawful.

5. Efforts to commercially exploit the trade secret shall not be hindered or impeded by imposing excessive or discriminatory conditions or conditions that dilute the value of the trade secret.

II. The Government of the U.S.S.R. shall provide for a review of the following issues concerning protection of sound recordings:

1. Recognizing that the United States provides a longer term of protection for sound recordings than is in the current draft proposal of the U.S.S.R., the Government of the U.S.S.R. commits to review the question of including in the appropriate draft legislation which must be presented to the Supreme Soviet of the U.S.S.R. in 1990, a provision to provide to producers of sound recordings, a term of protection for fifty (50) years from the date of first publication of the sound recording.

2. Recognizing that the United States adheres to the Geneva Phonograms Convention, the Government of the U.S.S.R. commits to review immediately after enactment of sound recording protection, its adherence to that Convention.

III. The Government of the U.S.S.R. shall provide for a review of protection for inventions, as follows:

1. The Government of the U.S.S.R. undertakes to examine further paragraph 3 of Article 30 of the draft law "On Invention in the U.S.S.R." and to consider possible submission of proposals to the Supreme Soviet.

2. The Government of the U.S.S.R. and the Government of the United States agree to seek mutually acceptable provisions on compulsory licensing of patents in the working group provided for in paragraph 5 of Article VIII of the Agreement. Both sides will present proposals on provisions for compulsory licensing that will be fully considered by the working group including the following:

(2.1) A compulsory license to supply domestic needs may be given if:

(2.1.1) the license only permits local making of the patented invention;

(2.1.2) the license is granted to one qualified to make the invention;

(2.1.3) those seeking the license show that the combination of manufacture, use and importation of the patented invention has not satisfied the basic needs of the local market by the expiration of a period of five years from the date of the grant of the patent;

(2.1.4) those seeking the license show that the patent owner has refused to grant a voluntary license on terms in line with normal commercial practices;

(2.1.5) the patent owner does not show that his inaction is justified by the existence of legal, technical or commercial reasons;

(2.1.6) the patent owner receives reasonable and equitable compensation for the license;

(2.1.7) the license is nonexclusive;

(2.1.8) the license will be non-assignable except with that part of the enterprise or goodwill which exploits such a license;

(2.1.9) the license does not significantly prejudice the economic interests of the patent owner;

(2.1.10) the license does not create trade distortions; and

(2.1.11) decisions to grant a compulsory license and the terms of the license are made by a court and can be appealed and reviewed in accordance with national law;

(2.2) The U.S.S.R. will grant no other compulsory licenses; and

(2.3) A patent shall not be revoked except for invalidity.

Negotiations on these provisions must be concluded during 1991. The agreed provisions shall be an integral part of the Agreement.

IV. The Government of the U.S.S.R. shall establish with the Government of the United States a working group on intellectual property matters. This working group will address the following topics:

1. The exchange of information and cooperation among authorities responsible for the protection of intellectual property;
2. The implementation of intellectual property laws;
3. The review of international trends in the protection of intellectual property rights in the context of international economic and trade relations;
4. The protection of integrated circuit layout designs;
5. The protection for products that

(5.1) were not patentable subject matter in the U.S.S.R. before the effective date of the new Soviet law on inventions; and

(5.2) that were the subject of patents in the United States or other countries that were based on applications filed before the effective date of the new Soviet law on inventions.

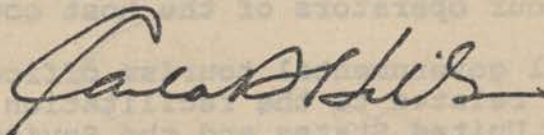
During these consultations, specifics of this protection including, inter alia, the term and coverage will be considered; and

6. The government use of patented inventions.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Carla A. Hills
United States Trade Representative

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

1. Both Parties shall facilitate the expansion of tourism between the United States and the Soviet Union and encourage the adoption of measures by tourist organizations and companies of both countries to satisfy the desire of tourists to learn about the lifestyles, achievements and culture of each country.

2. Taking into account the great significance of tourism in establishing mutual understanding between the peoples of the United States and the Soviet Union, and also the growth of its role in the development of economic cooperation between the two countries, the Parties agree to conclude a separate bilateral agreement on tourism.

Official Tourism Promotion Offices

1. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.

2. Permission to open tourism promotion offices or field offices, and the status of personnel who head and staff such offices, shall be as agreed upon by the Parties, and subject to the applicable laws and regulations of the host country.

3. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with travel agents or tour operators of the host country.

4. Official governmental tourism offices shall exercise activities, related to the facilitation of development of tourism between the United States and the Soviet Union, including:

- a) providing information about the tourist facilities and attractions in their respective countries to the public, the travel trade, and the media;

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

- b) conducting meetings and workshops for representatives of the travel industry;
- c) participating in trade shows;
- d) distributing advertising materials such as posters, brochures and slides, and also coordinating advertising campaigns; and
- e) performing tourism market research.

5. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Commercial Tourism Enterprises

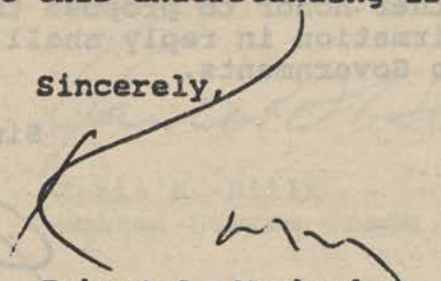
1. Commercial tourism enterprises, whether privately or governmentally-owned, or branches thereof shall be treated as private commercial enterprises, fully subject to all applicable laws and regulations of the host country.

2. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled or administered by that Party or any joint venture therewith or any private company or joint venture between private companies, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party on a fair and equitable basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Robert A. Mosbacher
Secretary of Commerce
United States of America

Washington, June 1, 1990

Dear Mr. Deputy Minister:

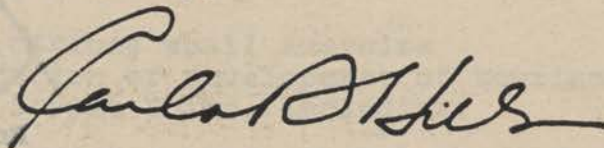
In connection with the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics ("Agreement") to be signed today, I have the honor to confirm the understanding reached by our Governments as follows:

Upon the extension of most-favored-nation treatment by the United States of America to the Union of Soviet Socialist Republics in accordance with the terms of said Agreement, and after the date on which a note from the Government of the United States of America is delivered to the Government of the Union of Soviet Socialist Republics stating that the Government of the United States has, accordingly, made available most-favored-nation treatment for the Union of Soviet Socialist Republics no less favorable than that provided in an Agreement between the Governments of the United States of America and the Union of Soviet Socialist Republics Regarding Trade signed on October 18, 1972, the balance of \$674,000,000 in payment of lend lease accounts shall become due, and shall be paid, in accordance with the terms of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Settlement of Lend Lease, Reciprocal Aid and Claims, signed October 18, 1972.

The Government of the United States of America undertakes not to deliver the diplomatic note referred to above until export credits, guarantees and insurance through the Export-Import Bank and other similar credits for the purchase of American goods are available to the Union of Soviet Socialist Republics on terms appropriate to the transactions, in accordance with the exchange of letters between Mr. Willis C. Armstrong and Mr. V. Alkhimov dated May 15, 1972.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,



Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

Dear Mr. Deputy Minister:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Madam Ambassador:

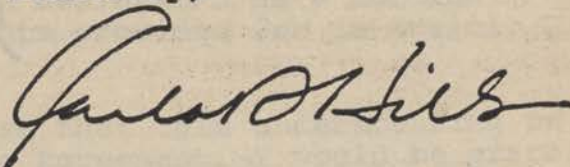
In connection with the signing on this date of the Agreement on Trade Relations between the Union of Soviet Socialist Republics and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Government as follows:

1. The Soviet Union intends in the near future to accede to the Convention Establishing the Customs Co-operation Council.
2. Beginning from January 1, 1991 the Harmonized Commodity Description and Coding System shall be implemented in the Soviet Union.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

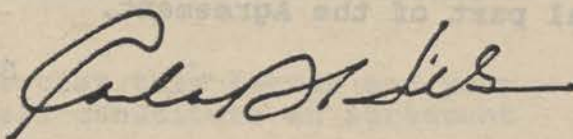
Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") as follows:

1. The Parties recognize that trade in textiles and textile products is generally governed by separate arrangements.
2. The provisions of paragraph 2 of Article I of the Agreement (quantitative restrictions) shall not apply to trade in textiles and textile products.
3. The elaboration of the market disruption safeguard provisions in Article XI of the Agreement (market disruption) is without prejudice to the right of either Party to apply any of its laws and regulations applicable to trade in textiles and textile products.
4. Nothing in this side letter or in the Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

1. In order to foster increased commercial activities and economic cooperation, the Government of the Union of Soviet Socialist Republics and the Government of the United States of America (the "Parties") agree to undertake the following activities:

a. to encourage their respective nationals, companies and organizations to develop, publish and provide directly, directories of nationals, companies and organizations involved in foreign trade and their officers, as well as other information useful in contacting and evaluating potential business partners, and lists of government agencies and officers involved in foreign trade policy and regulation; and

b. to create favorable conditions for access to nonproprietary and nonconfidential commercial information useful in evaluating potential business partners such as their financial reports, profit and loss statements, and experience in foreign trade.

2. Noting the particular needs of small and medium-sized enterprises in expanding trade, the Parties agree to pay attention to and provide appropriate support for small and medium-sized enterprises by promoting business cooperation networks which facilitate the search for business partners, access to publications and data bases, and information on the availability of technical innovations.

3. Any commercial representation designated as a foreign mission is not guaranteed the rights provided for in Article V of the Agreement.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign
Economic Relations
Union of Soviet Socialist Republics

Robert A. Mosbacher
Secretary of Commerce
United States of America

Washington, June 1 1990

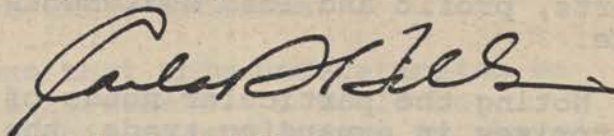
Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

With respect to paragraph 3 of Article VII of the Agreement, the Soviet Party will give favorable consideration to requests by nationals and companies of the United States to open and maintain deposit accounts in Soviet currency received in an authorized manner and to use such currency for local expenses in accordance with permission granted. Such permission shall remain in force irrespective of possible future Soviet laws and regulations which would restrict conditions of the holding, use or deposit of Soviet currency by foreign nationals or companies.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

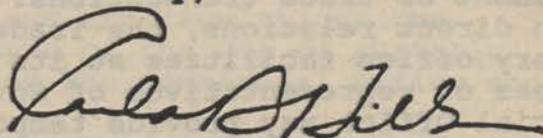
Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

1. The Government of the United States will, during 1990, request that the United States Congress repeal the prohibition on the importation into the United States of gold coins from the Soviet Union and will take all possible measures to ensure the repeal of this prohibition by December 31, 1991.
2. Until such time as the prohibition is repealed, paragraphs 1, 2 and 3 of Article I of the Agreement shall not apply to the importation into the United States of America of gold coins.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

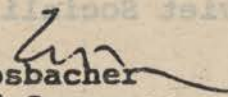
Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics, I have the honor to confirm the understanding reached by our Governments as follows:

1. The legal status of the Commercial Office of the United States of America ("USA") established in Moscow is set forth in Annex 1 hereto.
2. The legal status of the Trade Representation of the Union of Soviet Socialist Republics ("USSR") established in Washington, D.C. is set forth in Annex 2 hereto.
3. Additional offices of the Trade Representation of the USSR in the USA in other cities in the USA, as well as additional offices of the Commercial Office of the USA in the USSR in other cities in the USSR, may be established later upon agreement between the Governments of both countries. The status and terms and conditions of the operation of any such offices shall be mutually agreed upon at that time.
4. The establishment of the Trade Representation and the Commercial Office shall in no way affect the rights of Soviet organizations and of the natural or legal persons of the USA, either in the USSR or in the USA, to maintain direct relations with each other with a view to negotiation, execution and fulfillment of trade transactions. To facilitate the maintenance of such direct relations, the Trade Representation may provide temporary office facilities at its location to transient employees or representatives of Soviet organizations and the Commercial Office may provide temporary office facilities at its location to transient employees or representatives of nationals and companies of the USA where such facilities are not readily commercially available. These transient employees and representatives shall not be officers or members of the administrative, technical or service staff of the Trade Representation or the Commercial Office.

I have the further honor to propose that this letter, and the Annexes attached hereto, and your letter of confirmation in reply shall constitute an agreement between our Governments.

Sincerely,


Robert A. Mosbacher
Secretary of Commerce
United States of America

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

ANNEX 1

THE STATUS OF THE COMMERCIAL OFFICE OF THE UNITED STATES OF AMERICA IN THE UNION OF SOVIET SOCIALIST REPUBLICS

ARTICLE 1

The Commercial Office of the United States of America may perform the following functions:

1. Promote the development of trade and economic relations between the United States of America ("USA") and the Union of Soviet Socialist Republics ("USSR"); and
2. Provide assistance to nationals and companies of the USA in facilitating purchases, sales and other commercial transactions. The Commercial Office, and its respective officers and staff members, shall not participate in the negotiation, execution or fulfillment of trade or commercial transactions or otherwise carry on trade.

ARTICLE 2

1. The Commercial Office shall consist of one Principal Officer and no more than three Deputy Officers and a mutually agreed number of staff personnel, provided, however, that the number of officers and staff personnel permitted may be changed by mutual agreement of the two Governments.
2. The Commercial Office shall be an integral part of the Embassy of the USA in Moscow. The Government of the USSR shall facilitate in accordance with its laws and regulations the acquisition or lease by the Government of the USA of suitable official and residential premises for the Commercial Office and its staff.
3. (a) The Commercial Office, including all of its premises and property, shall enjoy all of the privileges and immunities which are enjoyed by the Embassy of the USA in Moscow. The Commercial Office shall have the right to use cipher.

(b) The Principal Officer of the Commercial Office and his Deputies shall enjoy all of the privileges and immunities which are enjoyed by members of the diplomatic staff of the Embassy of the USA in Moscow.

(c) Members of the administrative, technical and service staffs of the Commercial Office who are not nationals of the USSR shall enjoy all of the privileges and immunities which are enjoyed by corresponding categories of personnel of the Embassy of the USA in Moscow.

ANNEX 2

THE STATUS OF THE TRADE REPRESENTATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN THE UNITED STATES OF AMERICA

ARTICLE 1

The Trade Representation of the Union of Soviet Socialist Republics may perform the following functions:

1. Promote the development of trade and economic relations between the Union of Soviet Socialist Republics ("USSR") and the United States of America ("USA"); and
2. Provide assistance to Soviet organizations in facilitating purchases, sales and other commercial transactions. The Trade Representation, and its respective officers and staff members, shall not participate in the negotiation, execution or fulfillment of trade or commercial transactions or otherwise carry on trade.

ARTICLE 2

1. The Trade Representation shall consist of one Principal Officer, designated as Trade Representative, and no more than three Deputy Officers and a mutually agreed number of staff personnel, provided, however, that the number of officers and staff personnel permitted may be changed by mutual agreement of the two Governments.
2. The Trade Representation shall be an integral part of the Embassy of the USSR in Washington, D.C. The Government of the USA shall facilitate in accordance with its laws and regulations the acquisition or lease by the Government of the USSR of suitable official and residential premises for the Trade Representation and its staff.
3. (a) The Trade Representation, including all of its premises and property, shall enjoy all of the privileges and immunities which are enjoyed by the Embassy of the USSR in Washington, D.C. The Trade Representation shall have the right to use cipher.
(b) The Trade Representative and his Deputies shall enjoy all of the privileges and immunities which are enjoyed by members of the diplomatic staff of the Embassy of the USSR in Washington, D.C.
(c) Members of the administrative, technical and service staffs of the Trade Representation who are not nationals of the USA shall enjoy all of the privileges and immunities which are enjoyed by corresponding categories of personnel of the Embassy of the USSR in Washington, D.C.

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506

MAY 31 1990

The Honorable Yuri N. Chumakov
Head of Soviet Delegation
Deputy Minister of Foreign Economic Relations
Ministry of Foreign Economic Relations
Union of Soviet Socialist Republics

Dear Mr. Chumakov:

I am writing to you at your request to explain the relation between legislation currently pending in the U.S. Congress and paragraph 4 of Article XVII of the Trade Agreement we have negotiated.

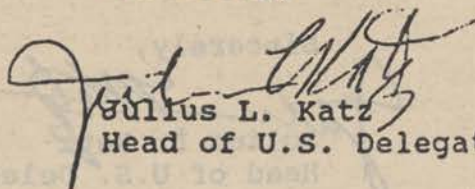
As you know, under current U.S. law, it is not possible to have a notice period prior to termination of the Trade Agreement. Therefore, our two delegations have agreed that paragraph 4 of Article XVII will read as follows:

"4. Either Party may terminate this Agreement upon written notice to the other Party and in such case the Parties will, to the fullest extent practicable, seek to minimize possible disruption to their trade relations."

As part of legislation currently in conference between the House of Representatives and the Senate, we have asked that a provision be added which would permit some notice period. We have suggested to Congress that this period be sixty days. We do not know when or if such legislation will be passed by Congress. If such a provision is enacted into law before the Trade Agreement is signed, paragraph 4 could be amended by inserting the phrase "sixty days" before the phrase "written notice." If the legislation is enacted after the Trade Agreement is signed, I would suggest an exchange of letters which would clarify that the Parties would give each other sixty days notice prior to termination.

I trust that this explanation is helpful to you.

Sincerely,



Julius L. Katz
Head of U.S. Delegation

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506

SEP 26 1990

The Honorable Yuri N. Chumakov
Head of Soviet Delegation
Deputy Minister of Foreign Economic Relations
Ministry of Foreign Economic Relations
Union of Soviet Socialist Republics

Dear Mr. Chumakov:

I have the honor to refer to the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics, signed in Washington on June 1, 1990 (the "Agreement").

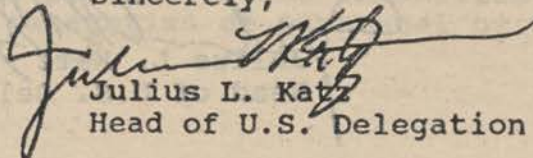
During the negotiation of the Agreement, our delegations discussed the desirability of including in Article XVII paragraph 4 a provision requiring 60 days written notice prior to termination. As I noted in my letter to you of May 31, 1990 (attached), U.S. legislation did not then permit the inclusion of such a provision.

On August 20, 1990, the President signed into law the Customs and Trade Act of 1990 which, among other things, would permit the inclusion of such a notice period. I therefore have the honor to propose that paragraph 4 of Article XVII be amended by inserting the phrase "sixty days" before the phrase "written notice" so that paragraph 4 would read in its entirety as follows:

"4. Either Party may terminate this Agreement upon sixty days written notice to the other Party and in such case the Parties will, to the fullest extent practicable, seek to minimize possible disruption to their trade relations."

I have the further honor to propose that, if the foregoing is acceptable, this letter and your affirmative letter in reply shall constitute an agreement between the United States of America and the Union of Soviet Socialist Republics to amend the Agreement which shall enter into force upon the entry into force of the Agreement.

Sincerely,


Julius L. Katz
Head of U.S. Delegation

[INFORMAL TRANSLATION]

October 31, 1990

Dear Mr. Katz:

I have the honor to confirm receipt of your letter of September 26, 1990 which reads as follows:

[See text of Ambassador Katz's letter.]

I have the further honor to confirm that your proposal is acceptable, and that your letter and this letter in reply constitute an agreement between the Union of Soviet Socialist Republics and the United States of America to amend the Agreement which shall enter into force upon the entry into force of the Agreement.

Sincerely,

/s/

Yuri N. Chumakov
Head of Soviet Delegation

{FR Doc. 91-18761

Filed 8-2-91; 2:28 pm]

Billing code 3190-01-C

UNITED STATES DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

October 11, 1950

Dear Mr. Kats:

I have the honor to acknowledge receipt of your letter of September 20, 1950 which reads as follows:

[See text of Ambassador Kats's letter.]

I have the further honor to advise that your proposal is acceptable, and that your letter is being referred to the appropriate authorities for their consideration. The United States of America is ready to accept the agreement which shall enter into force upon the entry into force of the agreement.

Sincerely,

Yuli M. Chernikov
Head of Soviet Delegation

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Federal Register

Vol. 58, No. 151

Tuesday, August 6, 1991

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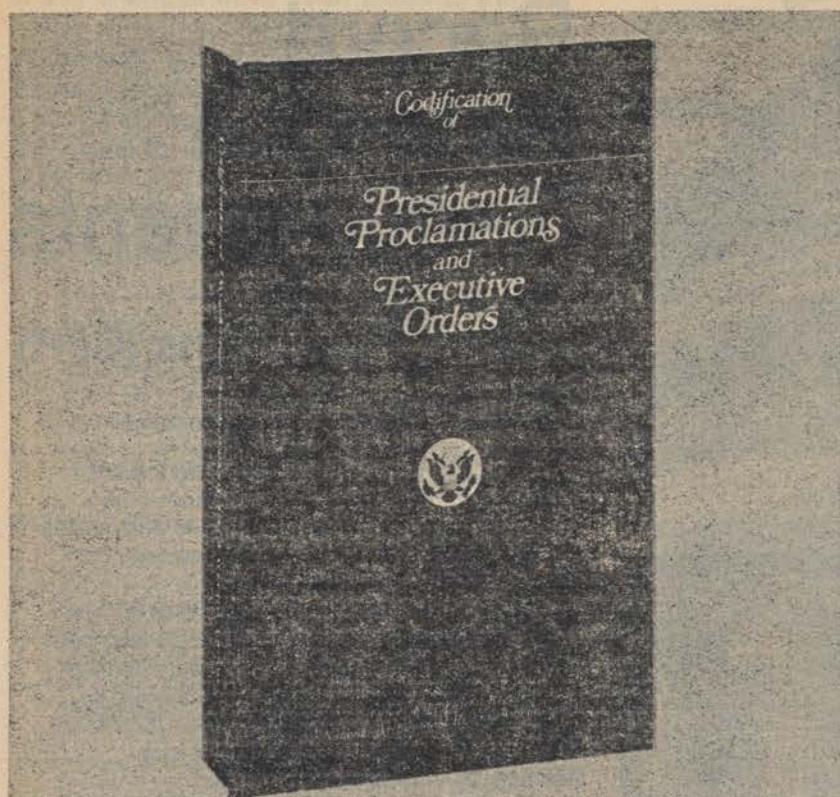
LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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New edition Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders**, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

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